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1 APPEARANCES:
2 DONALD A. MIGLIORI, ESQ.
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7 (410) 521-9400, ext. 8209
8 On behalf of Plaintiffs
9
10 RICHARD P. CASSETTA, ESQ.
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13 St. Louis, Missouri 63101
14 (314) 552-6000
15 On behalf of Defendants
16
17
18 (INDEX AT REAR OF TRANSCRIPT)
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1 P R O C E E D I N G S
2 VIDEOGRAPHER: This is the deposition of
3 Kevin W. Wildes taken on behalf of Plaintiffs in the

4 matter of State of Oklahoma, et al., Plaintiffs,
5 versus R.J. Reynolds Tobacco Company, et al.,
6 Defendants; Case Number CJ-96-1499 for the District
7 Court of Cleveland County, State of Oklahoma.

8 This deposition is being taken at
9 Kirkland & Ellis, 1450 G Street, Northwest,
10 Washington, D.C.

11 The time is approximately 8:06 a.m. The
12 date is September 10, 1998.

13 The court reporter is Frank Smonskey with
14 the firm of Ace-Federal Reporters, 1120 G Street,
15 Northwest, Washington, D.C. 20005. I am the video
16 operator, Chris Weiskircher, also with Ace-Federal.

17 Will the reporter swear the witness.
18 Whereupon,

19 KEVIN WILLIAM WILDES
20 was called as a witness and, having first been duly
21 sworn, was examined and testified as follows:

22 VIDEOGRAPHER: Would counsel please
23 identify themselves and who they represent?

24 MR. MIGLIORI: Donald Migliori from the
25 law firm of Ness, Motley, Loadholt, Richardson &

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1 Poole on behalf of the Plaintiffs.

2 MR. CASSETTA: Richard Cassetta of the
3 law firm of Thompson Coburn, St. Louis, Missouri,
4 representing Lorillard Tobacco Company.

5 I have a brief statement for the record.

6 As I said, my name is Richard Cassetta. I represent
7 Lorillard Tobacco Company. I am speaking for this
8 statement on the record on behalf of all Defendants
9 except those whose jurisdictional motions have not
10 been resolved or jurisdictional objections have not
11 been resolved.

12 Father Wildes has not been shown any
13 documents to which defendants assert claims of
14 privileges or protections. And we would object to
15 the use of any such documents during this
16 deposition.

17 We would object to Father Wildes being
18 questioned about any documents to which Defendants
19 assert claims of privilege or protection.

20 It is our position that to use the
21 documents in this manner would be inconsistent with
22 the orders of the Oklahoma court as well as the local
23 Oklahoma rules of professional responsibility. And
24 we have a standing objection to the use of any such
25 documents.

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1 MR. MIGLIORI: In response, all I would
2 like to say is that to the extent that any of those
3 privileges are still questions unresolved in the
4 court we would, in light of your statement on behalf
5 of those defendants you have identified, reserve any
6 right to continue this deposition to ask Father
7 Wildes any questions pertaining to those documents
8 should they no longer be in dispute in the court as

9 to privilege.

10 EXAMINATION

11 BY MR. MIGLIORI:

12 Q. Good morning, Father Wildes.

13 A. Good morning.

14 Q. Could you please state your full name?

15 A. Kevin William Wildes.

16 Q. I understand and from reading over some
17 of the materials that your counsel here provided to
18 us that you have had other depositions in the past.

19 I know of the first deposition being a
20 deposition you provided in the Mississippi attorney
21 general action.

22 A. Yes.

23 Q. Is that correct?

24 A. That's correct.

25 Q. So you are familiar with how this process

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6

1 works?

2 A. I think so.

3 Q. The only thing I would like to remind you
4 of is that if at any time I ask you a question which
5 is unclear I ask you to notify me of that. I will
6 try to clarify my question. If you do in fact answer
7 the question that I pose I will assume that you have
8 understood it.

9 A. Sure.

10 Q. The other thing obviously is that we have

11 a stenographer here in addition to the videographer,
12 and all answers have to be verbalized.

13 A. Right.

14 Q. Okay. And some nods of the head or
15 gestures are difficult to record. And I ask you to
16 fully articulate yes or no answers. Do you have any
17 questions before we begin?

18 A. No.

19 (Plaintiff's Exhibits 1 and 2
20 identified.)

21 BY MR. MIGLIORI:

22 Q. In front of you now are two documents
23 that have been premarked as exhibits Plaintiff's 1
24 and Plaintiff's 2. I kindly ask you to look them
25 over at this time.

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1 (Witness examined the documents.)

2 A. Okay. Okay. Yes.

3 Q. Have you seen those documents before?

4 A. Yes.

5 Q. I am going to ask you more questions in
6 more detail about those a little later. But at the
7 outset I want to ask you as to Plaintiff's Exhibit 1,
8 which is entitled "Materials Relied Upon By Kevin Wm.
9 Wildes, S.J." Is that document a complete document?

10 A. To the best of my knowledge, yes.

11 Q. In that document does it identify each
12 and every document that you intend to rely upon in
13 offering any testimony whether it be opinion or

14 otherwise relative to this action pending in
15 Oklahoma?

16 A. Yes.

17 Q. So to the best of your knowledge there
18 are no documents that are excluded from that list
19 which you intend to rely upon in providing testimony
20 in the Oklahoma action?

21 A. Outside of my general training, no.
22 There is nothing else.

23 MR. CASSETTA: Counsel, I'm sorry. I had
24 indicated at the beginning of the deposition that
25 this letter listed two additional things that Father

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8

1 Wildes was relying upon.

2 MR. MIGLIORI: Fine.

3 BY MR. MIGLIORI:

4 Q. You are referring now to Plaintiff's
5 Exhibit Number 2?

6 A. Yes.

7 Q. On the front page of that collective
8 exhibit is a letter dated September 2, 1998, from
9 Richard Cassetta to Susan Hoffman of the Ness, Motley
10 law firm; is that correct?

11 A. Yes.

12 Q. To the extent that that letter identifies
13 two depositions, those are the only other documents
14 not listed in Plaintiff's 1 that you would rely upon
15 in offering testimony in the Oklahoma action?

16 A. Yes, that's correct.

17 Q. As for document, Plaintiff's Exhibit

18 Number 2, if you look through that, that is a

19 collection of a few things in addition to identifying

20 the two depositions of Dr. Crutcher and

21 Dr. Richmond. It is also a list of opinions, and

22 that list of opinions itself is about nine pages. Is

23 that correct?

24 A. That's correct.

25 Q. And in those first nine pages, are those

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1 all the opinions that you intend to offer --

2 A. Yes.

3 Q. -- testimony with regard to this matter

4 pending in Oklahoma?

5 A. Yes.

6 Q. Are there any opinions which you intend

7 to offer in this matter which are not listed in these

8 nine pages?

9 A. None that I am aware of.

10 Q. On the tenth page is a listing of matters

11 in which you have testified, and it refers to the

12 deposition that we alluded to in the matter of the

13 Attorney General of the State of Mississippi. That

14 deposition was on March 26 and 27 of 1997. Do you

15 recall that deposition?

16 A. Yes, I do.

17 Q. Was that the first deposition you ever

18 provided testimony in?

19 A. Yes.

20 Q. And that was a deposition taken by the
21 partner in the law firm of Ness, Motley, John
22 McConnell?

23 A. Yes.

24 Q. Since that deposition you have listed on
25 this document depositions in the Broin matter, which

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1 is pending in Florida, I believe; is that correct?

2 A. Yes.

3 Q. And that deposition was on June 4 of '97?

4 A. Yes.

5 Q. Did you offer any trial testimony in that
6 matter?

7 A. No.

8 Q. And then the last matter is the Engle
9 matter, which is also pending in Florida?

10 A. Yes.

11 Q. And that testimony was given this year,
12 May 27?

13 A. Yes.

14 Q. And has that matter begun trial?

15 A. I think they are only in jury selection
16 at this point or they are still in jury selection.

17 Q. And you are prepared to offer trial
18 testimony if called upon?

19 A. If called upon, yes.

20 Q. Aside from those three depositions, have

21 you provided any other sworn deposition testimony in
22 any matter?

23 A. In any matter? Yes. And I am going to
24 have to get you the specifics on it. There was a
25 deposition in the case against Texas Women's

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1 Hospital, which I believe I gave in early '98, and I
2 can get and would supply you with the references on
3 that.

4 Q. Is this the Texas Women's Hospital to
5 which you refer in your deposition testimony of March
6 of 1997?

7 A. Yes. The matter was pending then. I did
8 not testify in that trial.

9 Q. Has that trial already concluded?

10 A. Yes, it has concluded. It is in appeal
11 now I believe.

12 Q. And you did not testify?

13 A. I did not testify.

14 Q. Were you excluded from testifying?

15 A. Yes, they excluded all -- as I recall the
16 trial, they excluded everything but the medical, very
17 strict medical testimony in that trial.

18 Q. Did you have to take the stand at any
19 point during the trial in order to offer some kind of
20 proof of what you would testify to?

21 A. No.

22 Q. And you said that was sometime early in
23 1998?

24 A. I think so.

25 Q. And that was in the Texas state court?

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1 A. The deposition was I think in a district
2 court. It was actually in a district court in Texas.

3 Q. When you say district, do you mean United
4 States district court?

5 A. No, no. I said it was a Texas --

6 Q. State court?

7 A. -- state court.

8 Q. Aside from the three listed in
9 Plaintiff's 2 and this deposition that you provided
10 in the Texas Women's Hospital, have you ever given
11 any other deposition testimony?

12 A. No.

13 Q. Aside from these four depositions, have
14 you ever provided any sworn testimony in a trial?

15 A. No.

16 Q. Of the four depositions that you have
17 identified only one is still pending?

18 A. That's correct.

19 Q. And that is the Engle matter?

20 A. The Engle matter, right.

21 Q. And then after that list of depositions
22 you have a copy of your curriculum vitae; is that
23 correct?

24 A. Yes.

25 Q. Is this the most current curriculum

1 vitae?

2 A. I believe so.

3 Q. The very last page has a date of June 4,
4 1998?

5 A. Right.

6 Q. To the best your knowledge nothing has
7 changed since June?

8 A. Nothing has changed. I will probably
9 have to update it one of these days.

10 Q. One other caveat that I forgot to mention
11 at the beginning: Because we do have a
12 stenographer, I ask you to withhold your answer until
13 I have completely articulated my question.

14 A. I am terrible at that. So you are going
15 to have to keep going. I try.

16 Q. The stenographer is somebody you have to
17 worry about more than me.

18 So this is the most current. Has this
19 curriculum vitae changed at all since March 1997 when
20 you testified in the Mississippi tobacco action?

21 A. I think the only change -- I'd have to go
22 through it -- might be some additional things I
23 published, papers that I have given, and those are on
24 there by date. So we could go through them.

25 Q. Could you identify for me what has

1 changed?

2 A. Let's see. That deposition was in --

3 Q. It was March 26 and 27 of 1997?

4 A. -- 1997. I think the publications
5 probably from number 35 to 40 would all be new since
6 then.

7 Q. Okay. You are on page 12?

8 A. Yes. I'm sorry.

9 Q. And so beginning with number 35 that is a
10 1998 publication?

11 A. Right.

12 Q. That is called "Redesigning The Human" --

13 A. Genome.

14 Q. -- "Genome"?

15 A. Right.

16 Q. And everything after that?

17 A. Right.

18 Q. Number 36 being the "Healthy Skepticism"?

19 A. Right.

20 Q. Number 37 "Ownership of the Human Body
21 and Secular Ethics." Are any of these subsequent --
22 and there are three more?

23 A. Right.

24 Q. One is called "Relationship With Payers
25 and Institutions"?

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1 A. Right.

2 Q. You will have to help me with the Latin
3 on the next one.
4 A. "Quaestio Disputata."
5 Q. Okay. And then the last one being
6 "Solidarity in Secular Societies"?
7 A. Right.
8 Q. And that's with Engelhardt?
9 A. Right. No. It's about some of his work
10 and that is in press. It will be out soon.
11 Q. That has not been published yet?
12 A. The German version has been published;
13 the English version hasn't.
14 Q. Was Engelhardt your mentor?
15 A. Yes.
16 Q. He was the person under whom you got your
17 Ph.D.?
18 A. No. The person I worked under was Triss
19 Engelhardt was on my committee. Brooke Brody was my
20 mentor.
21 Q. And that was at Rice?
22 A. At Rice University, right.
23 Q. In this list of publications which has
24 now numbered up to 40, are any of these publications
25 about tobacco and health?

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1 A. Directly about tobacco, no.
2 Q. The next section in your curriculum vitae
3 on page 13 is called "Invited Articles and Book
4 Chapters"?

5 A. Right.

6 Q. Are any of those new since the deposition
7 of March of '97?

8 A. No.

9 Q. Are any of those about issues relating to
10 tobacco and health?

11 A. No.

12 Q. As for "Edited Books," are any of those
13 post-March 1997?

14 A. I think the last one, "Choosing Life,"
15 came out later in '97. So that would have been post
16 the March deposition.

17 Q. Are any of the items listed under "Edited
18 Books" relating to tobacco and health?

19 A. No.

20 Q. How about "Edited Monographs" in the next
21 section?

22 A. No, I haven't --

23 Q. Those all predate March?

24 A. They all predate the March and none of
25 them are about --

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17

1 Q. Tobacco and health?

2 A. -- tobacco and health.

3 Q. Okay. And as far as the book reviews,
4 have you done any book reviews since March of '97?

5 A. I have one book review that is not listed
6 on here because it has not appeared yet. It is a

7 short notice that is coming out in "Ethics," and it
8 was not about tobacco and health.

9 Q. Do you know the title of that?

10 A. No, I am embarrassed to say. I did it so
11 long ago. I can't remember what --

12 Q. That is going to be published?

13 A. In a journal called "Ethics," and some
14 time this year they were saying. I can update this
15 accordingly.

16 Q. Okay. And then the last section with
17 regard to publications is called "Miscellaneous
18 Publication."

19 A. Uh-huh.

20 Q. I notice one of those, the last one is
21 "Addiction Addicts," The New York Times?

22 A. Right.

23 Q. November 20, 1997?

24 A. Yes.

25 Q. And that is an editorial?

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18

1 A. An op-ed, yes.

2 Q. An op-ed piece that you wrote for The New
3 York Times?

4 A. Yes.

5 Q. And what can you tell me about that
6 piece?

7 A. It was an op-ed that I wrote about
8 looking at how society medicalizes or often
9 medicalizes its problems using addiction as a recent

10 example of that, and that medicine provides a way for
11 society to get at some of the problems that we used
12 to deal with in either religious terms or moral
13 terms.

14 The term I would use on it is the
15 technical term. It was about medicalization of
16 social problems.

17 Q. And that addiction that you refer to,
18 does that have anything whatsoever to do with tobacco
19 and health in that article?

20 A. I used the use of addiction, the way
21 addiction is often being used around the discussion
22 of tobacco as an example of medicalization and the
23 social construction of many of these concepts.

24 But I also referred to, I think, also
25 things like attention deficit disorder and efforts to

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19

1 look at gun violence as a medical problem, and things
2 like that.

3 Q. So those were all examples of addictions?

4 A. Examples of medicalization and addiction
5 was an example of medicalization.

6 Q. Okay. Did you refer to any other types
7 of addictions relative to drugs?

8 A. No.

9 MR. CASSETTA: Object to the form of that
10 last question.

11 THE WITNESS: I may have. I can't

12 remember because I can't remember how the final
13 edited version came out from them. I may have
14 included -- let me put it this way: I would have
15 been surprised if I didn't include some reference to
16 alcoholism in there as well.

17 BY MR. MIGLIORI:

18 Q. How did that op-ed piece come about?

19 A. I teach on a two-year cycle a graduate
20 course on philosophy of medicine, and I happened to
21 be teaching that course last fall, and it struck me
22 that there were a lot of -- and one of the topics
23 that I cover in the course is the sociology of
24 medicalizing our problems and how that goes back and
25 forth and issues that it plays into. It just struck

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20

1 me that there were a number of relevant examples as I
2 was lecturing in class.

3 So I sat down and I wrote an essay. The
4 Times picked it up, which surprised me actually.

5 Q. Did you send it to The Times?

6 A. Our public relations office did, yes.

7 Q. Did anyone ask you to prepare that op-ed
8 piece?

9 A. No.

10 Q. And are you the sole author of that
11 piece?

12 A. I certainly am except for the editors of
13 The New York Times.

14 Q. As for "Work in Progress" in the last

15 page, page 16, of your curriculum vitae --
16 A. Yes.
17 Q. -- you list a book "Moral
18 Acquaintanceship: Methodology in Bioethics."
19 A. Right.
20 Q. Does that have anything whatsoever to do
21 with tobacco and health?
22 A. No.
23 Q. Have your "Memberships" changed since
24 March of 1997?
25 A. I don't believe so. I don't think of any

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1 I have added to that.
2 Q. And your "Community Service" has not
3 changed on your curriculum vitae since March of 1997?
4 A. No.
5 Q. Looking at those documents, let's start
6 with Plaintiff's 1, the list of materials upon which
7 you have relied in providing your testimony for this
8 case, who prepared that list?
9 A. The list was prepared through the
10 materials through Shook, Hardy.
11 Q. Who in particular prepared it?
12 A. The person I worked with most closely is
13 Billy Randalls.
14 Q. He was the attorney that was by your side
15 when you testified in March of 1997?
16 A. Yes.

17 Q. Was anyone else from Shook, Hardy
18 involved?
19 A. I have also done work with an associate
20 David Woods.
21 Q. Anyone else?
22 A. Not to my knowledge, no. I'm sure there
23 were.
24 Q. Did Billy Randalls actually prepare that
25 document?

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1 MR. CASSETTA: Object as to the form of
2 the question.
3 THE WITNESS: I don't know.
4 BY MR. MIGLIORI:
5 Q. Did that come off your computer or did
6 that come out of somebody else's computer?
7 A. It came out of -- they prepared the
8 document. I reviewed the document in light of the
9 materials that I had been sent.
10 Q. Did you change any of the drafts of that
11 document if there were any drafts?
12 A. I don't think so. I may have -- the only
13 thing I really went through was to check what I had,
14 what I have received versus what was on the list, and
15 I did make sure that they matched up.
16 It has been a while. I don't recall
17 whether -- if there were any changes it was simply I
18 either deleted what was there or added things that
19 were omitted from the list.

20 Q. Do you know how many drafts there may
21 have been to that document?
22 A. I suspect there was probably an original
23 and then this.
24 Q. Did you speak with any other attorneys
25 aside from the attorneys at Shook, Hardy in

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23

1 preparation of that document?
2 A. No, not to my knowledge.
3 Q. How about Plaintiff's 2? The top of that
4 document is on Thompson Coburn letterhead.
5 A. Right.
6 Q. Who prepared -- let's start with the list
7 of opinions.
8 A. Right.
9 Q. I will assume that since the letter on
10 the top is signed by Mr. Cassetta that he prepared
11 that. Is that your knowledge?
12 A. Right.
13 MR. CASSETTA: Object as to form. You
14 mean prepared the letter, Counsel?
15 MR. MIGLIORI: Right.
16 BY MR. MIGLIORI:
17 Q. As to the second section of that exhibit
18 which is your list of opinions, which I believe is
19 nine pages long --
20 A. Yes.
21 Q. -- who prepared that section?

22 A. This is a document that had several -- I
23 wrote the original. It has been developed, or I
24 reviewed this a couple of weeks ago and updated it
25 myself.

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24

1 Q. Did you send that to anybody to review
2 your work? When I say "that," I mean your list of
3 opinions.

4 A. No. I mean, I've kept it on file with
5 Shook, Hardy, basically so it would be accessible.

6 Q. Did anyone from Shook, Hardy add or
7 subtract from that document?

8 A. No. It has been by my hand.

9 Q. So that is 100 percent your product, that
10 list of opinions?

11 A. If you mean did I actually do the typing
12 on it?

13 Q. No. I mean that is your authorship?

14 A. Yes.

15 Q. And Bill Randalls or David Woods had
16 nothing to do with that?

17 A. No.

18 MR. CASSETTA: I object as to the form of
19 that last question.

20 BY MR. MIGLIORI:

21 Q. When I say "nothing to do with that," I
22 am referring to the actual authorship.

23 A. Authorship, right.

24 Q. They didn't ask you to take anything out

25 of it, did they?

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25

1 A. No. In fact, I edited it down myself the
2 various points and cleaned it up.

3 Q. When you made your edits, was that based
4 on any conversations you had with anybody?

5 A. No. In reading I thought it didn't
6 either communicate adequately or it was
7 inappropriate. So I took things out and reworded
8 things myself.

9 Q. When did you first draft that?

10 A. It would have been probably initially
11 prior to the March '97 deposition. But I could look
12 back and try to give you a more specific date.

13 Q. So that might be different from the
14 disclosure that you would have had in March of 1997?

15 A. I suspect it probably is. I'd have to
16 get the other ones out and look page by page, but
17 yes.

18 Q. Do you know how many drafts of that
19 document there were?

20 A. Offhand, no. I can't say specifically.

21 Q. Have you kept all the drafts of that
22 document?

23 A. I should have, yes. I have a file. I
24 think I have the drafts.

25 Q. Would you be able to produce those drafts

1 for us?

2 A. I probably could. Sure.

3 Q. And then as for the curriculum vitae,
4 that is something that you maintain?

5 A. I maintain that myself and I update it.

6 Q. So both your CV and your list of opinions
7 are works in progress for Father Wildes?

8 A. Yes.

9 Q. Okay. Since March of 1997, have you met
10 with any lawyers from any of the defendants in this
11 litigation?

12 A. Other than meeting with Mr. Cassetta for
13 this and the times I have met with Mr. Randalls for
14 the two Florida depositions, no.

15 Q. When was the first time you met with
16 Mr. Randalls after March of 1997?

17 A. Honestly I don't recall offhand. It was
18 probably later that summer of '97 in connection with
19 the Broin deposition.

20 Q. And you gave that deposition in June?

21 A. I think so.

22 Q. June 4 of 1997?

23 A. Right. So it was probably around that
24 time.

25 Q. Do you know how many times you met with

1 any attorneys prior to your Broin deposition?

2 A. I think actually meeting I probably only
3 met with him once prior to the Broin deposition.

4 Q. Do you recall where that was?

5 A. I think it was in D.C. because the
6 deposition was also in D.C.

7 Q. So you didn't have to travel anywhere for
8 that deposition, that meeting?

9 A. No.

10 Q. And have you had phone conversations
11 between March and June of '97 with attorney Randalls
12 or any other attorney?

13 A. Yes, also in connection with the other
14 depositions and also just getting scheduling things
15 done, stuff like that.

16 Q. If you can estimate in total work hours
17 between March of '97 and June of '97, do you know how
18 many hours you worked as an expert in all of these
19 tobacco matters?

20 A. A rough estimate, I would say largely
21 what I did aside from the depositions themselves was
22 just reading material, probably a hundred hours.

23 Q. Were you provided documents after March
24 and before June in order to prepare for the Broin
25 matter?

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1 A. I probably was, but I don't recall
2 specifically. I probably was provided with a lot of

3 the legal stuff around the Broin case itself at the
4 time.

5 Q. Are any of those documents that you are
6 referring to documents which are not identified in
7 Plaintiff's Exhibit 1 before you right now?

8 A. No. Whatever I was provided is in the
9 list because I double-checked the list.

10 MR. CASSETTA: Counsel, I am going to
11 object as to form and also state that we have
12 complied with the order and stipulation regarding
13 discovery in Oklahoma.

14 BY MR. MIGLIORI:

15 Q. My question to you, Father, is whether or
16 not there are any documents that have been provided
17 to you in the Broin matter upon which you intend to
18 rely in offering testimony in the Oklahoma tobacco
19 action?

20 A. Other than anything that might be listed
21 on this list, no.

22 Q. And the same would apply for your
23 deposition in Engle. Were there any documents
24 provided to you in preparation for your deposition on
25 March 27, 1998, in the Engle matter which are

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1 documents upon which you intend to rely but are not
2 identified in Plaintiff's Exhibit 1 before you now?

3 A. No.

4 Q. When you prepared for the Engle
5 deposition, were you meeting with the same attorneys

6 that you have already referred to?

7 A. Yes.

8 MR. CASSETTA: Object as to the form of
9 the question.

10 BY MR. MIGLIORI:

11 Q. Had you met with any other attorneys
12 besides attorneys Randalls or Woods in order to
13 prepare for the Engle deposition?

14 A. No.

15 Q. Do you recall whether you ever met with
16 them prior to the Engle deposition, actually meeting
17 with them?

18 A. I don't recall any particular meeting,
19 no.

20 Q. Had you ever been out to the Midwest to
21 prepare for any depositions since March of 1997, or
22 have all of your meetings since then, since March of
23 '97 been in Washington, D.C.

24 A. I think I was once may have been in -- I
25 have to back up -- I think I was out to Kansas City

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1 once, and there was nothing particular or specific at
2 the point. It was because there was a lot of -- the
3 litigation was in limbo given the attempted political
4 solution at the time.

5 Q. So that was since March of '97?

6 A. That was March of '97.

7 Q. You think you went out to -- I'm sorry --

8 where?

9 A. To Kansas City, to Shook, Hardy's office.

10 Q. And that would have been to meet again

11 with attorney Randalls?

12 A. Right.

13 Q. And you said that you didn't speak about

14 anything in particular when you had that meeting?

15 A. It was more a general update, as I

16 recall, and I can find it. I can probably locate the

17 date on my calendar more specifically for you.

18 It was more general update about the

19 litigation and where it was at the point, what was

20 going on, what wasn't going on, and part of it was my

21 own effort to just plan my time and projects, and

22 things like that a little more carefully.

23 Q. Was that a one-day meeting?

24 A. Yes.

25 Q. You didn't stay over?

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1 A. No. I think I wound up staying over

2 because I flew out the night before and wound up with

3 bad weather, and I spent most the night in Chicago,

4 or something like that.

5 Q. And all of those accommodations were

6 provided for or I should say paid for by Shook,

7 Hardy?

8 A. Yes.

9 MR. CASSETTA: Object to the form of that

10 question.

11 BY MR. MIGLIORI:

12 Q. Do you know who Shook, Hardy represents
13 in these actions?

14 A. I believe --

15 MR. CASSETTA: Object as to the form
16 again.

17 THE WITNESS: I believe they represent
18 Philip Morris and Lorillard, and probably others as
19 well.

20 BY MR. MIGLIORI:

21 Q. What is your understanding about who you
22 are offering testimony on behalf of in terms of the
23 tobacco litigation?

24 A. My understanding is that given the
25 limited area of my testimony it is on behalf of the

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1 defendants, which would be all of the tobacco
2 companies who are listed.

3 Q. And what about any defendants that might
4 not be tobacco companies?

5 A. There is also the Council for Tobacco
6 Research, which has been part of this as well, I
7 believe.

8 Q. Are you representing that your testimony
9 is also on behalf of CTR?

10 A. Some of my testimony -- yes.

11 Q. Do you know who ultimately pays for your
12 accommodations and for your -- well, strike that.

13 Are you being compensated for your time as well?
14 A. Yes.
15 Q. How are you being compensated, on what
16 rate?
17 A. \$200 an hour.
18 Q. And you have been compensated from March
19 of 1997 to the present?
20 A. Yes.
21 Q. And do you know who is actually paying
22 that compensation?
23 A. I submit my bills to Shook, Hardy, and I
24 am reimbursed through them.
25 Q. So the checks that you receive are from

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1 Shook, Hardy?
2 A. Yes.
3 Q. And it is a rate of \$200 per hour?
4 A. Yes.
5 Q. Did you read your deposition from March
6 of 1997 in preparation for today?
7 A. No.
8 Q. Do you recall that in your deposition in
9 March of 1997 you testified that as of that point you
10 had received approximately \$25,000 in compensation
11 for your services up to that point with respect to
12 tobacco litigation?
13 MR. CASSETTA: I object to the form of
14 the question. It assumes facts not in evidence.
15 Father, I just advise you that the fact

16 that Mr. Migliori states something doesn't
17 necessarily mean that that's what the evidence
18 reflects.

19 THE WITNESS: Okay.

20 BY MR. MIGLIORI:

21 Q. Father, I asked you if you recalled
22 saying that.

23 A. I don't recall saying that, but I may
24 have.

25 Q. In fact, do you know how much money you

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1 were compensated through March of '97 for your role
2 in the tobacco litigation?

3 A. Through March of '97?

4 Q. Yes.

5 A. No, not offhand.

6 Q. If I represent to you that your testimony
7 was \$25,000 up to that point, March of '97, does that
8 seem inconsistent with your general understanding?
9 Does that shock you?

10 MR. CASSETTA: Object as to the form.

11 THE WITNESS: No.

12 MR. MIGLIORI: Okay.

13 BY MR. MIGLIORI:

14 Q. Since March of 1997, do you know how much
15 you have been compensated through Shook, Hardy for
16 your role as an expert in the tobacco litigation?

17 MR. CASSETTA: I object as to the form of

18 the question.

19 THE WITNESS: No. I mean I could look it
20 up. I could figure it out easily. But no.

21 BY MR. MIGLIORI:

22 Q. Do you have an estimate as to how many
23 hours you have worked in total since March of '97 on
24 tobacco litigation?

25 A. I would make a rough estimate of 100

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1 hours.

2 Q. Do you know in which jurisdictions you
3 are identified as an expert for any of the tobacco
4 defendants?

5 A. I know I have been identified prior in
6 Mississippi and in Texas and in Florida, now in
7 Oklahoma. I think I was also identified in
8 Minnesota, but I am not sure about that. So those
9 are off the top of my head.

10 Q. So you have not been compensated for any
11 work as an expert in any other litigation aside from
12 those jurisdictions you have identified? And I am
13 speaking of tobacco-related litigation.

14 A. Right. I would include in that the Engle
15 and the Broin cases as well obviously, yes.

16 Q. In total hours for all of those matters,
17 all of those jurisdictions and for all of time, how
18 much in total hours do you think you have worked for
19 the tobacco industry as an expert?

20 MR. CASSETTA: Object as to the form of

21 the question.

22 THE WITNESS: This is really pulling a
23 rabbit out of the hat. But I would guess a couple
24 hundred hours.

25 BY MR. MIGLIORI:

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1 Q. And are you able to refer to records or
2 something that will help you identify exactly how
3 much time you did put in?

4 A. Sure.

5 Q. Would you be willing to provide that
6 information?

7 A. I would.

8 MR. MIGLIORI: Okay.

9 MR. CASSETTA: Counsel, I will state that
10 again that we have complied with the order and
11 stipulation on expert discovery and we will certainly
12 take any requests you have under advisement.

13 BY MR. MIGLIORI:

14 Q. Father, the money that you are given as
15 compensation for your involvement in the tobacco
16 litigation, is that money that goes to you under your
17 affiliation with the Catholic church?

18 A. It goes to me under my affiliation as a
19 member of the Society of Jesus. So as with all my
20 other income, it goes to the Jesuits.

21 Q. So once you receive that money you turn
22 that over to the Jesuits?

23 A. I do.
24 Q. All of it?
25 A. I work out with the minister of the

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1 community. If there is money in there, for example,
2 that was expense money, or something like that, we
3 work that out. And I have to file income tax very
4 carefully because money like this is taxable for me.
5 So I have to keep it and file it appropriately with
6 the community so that at the end of the year when I
7 file my taxes I then claim it as a charitable
8 donation.

9 Q. And when you say the Society of Jesus, is
10 that Georgetown University or is that entirely
11 separate?

12 A. It is a separate corporation. Georgetown
13 University is a civil corporation, and the Jesuit
14 community at Georgetown is a separate entity distinct
15 from the university.

16 Q. Does any of the compensation that you
17 have received for this tobacco litigation end up with
18 the corporate entity of Georgetown University?

19 A. No.

20 Q. The cover letter of Plaintiff's Exhibit
21 Number 2 references depositions of Dr. Crutcher and
22 Dr. Richmond. Who provided those depositions to you?

23 A. Mr. Cassette did.

24 Q. When did you receive those?

25 A. Probably a week to 10 days ago.

1 Q. Have you read both of them?

2 A. Not thoroughly, but, yes.

3 Q. Let's start with Dr. Crutcher. Is there
4 anything in Dr. Crutcher's deposition upon which you
5 intend to rely in providing deposition testimony in
6 the Oklahoma action?

7 A. It wouldn't be anything in particular
8 that I would find. He's a epidemiologist talking
9 about how epidemiologists do their work and develop
10 statistical models for things. But there is nothing
11 particular to my own interest there.

12 Q. Did he express any opinions in his
13 deposition which you disagree with?

14 A. I can't think of anything in particular
15 right now that I would, but I have to go back to give
16 it a more careful read for that.

17 Q. Are you an epidemiologist?

18 A. No, I'm not.

19 Q. Have you ever studied epidemiology?

20 A. No.

21 Q. As for Dr. Richmond, he is also
22 identified in the cover letter from Mr. Cassetta, his
23 testimony is identified as a transcript that you
24 intend to rely upon.

25 Is there anything in particular in

1 Dr. Richmond's deposition you intend to rely upon in
2 providing testimony in the Oklahoma action?

3 A. Again, I wouldn't say anything in
4 particular. I think he was a good example of someone
5 talking about the development of public health
6 policy, the difficulties, and I think in the question
7 and answer he makes clear some of the difficulties of
8 developing public health policies and using
9 scientific consensus and what that means, and things
10 like that. But in general nothing particular to my
11 own opinions that would be important.

12 Q. Do you know who Dr. Richmond is?

13 A. I know more of who he was than who he is.

14 Q. What is your understanding?

15 A. As the former surgeon general of the
16 United States.

17 Q. And also the founder or one of the
18 founders of the Head Start program?

19 A. Yes.

20 Q. Are there any opinions expressed in
21 Dr. Richmond's deposition testimony with which you
22 disagree?

23 A. None that I can think of particularly or
24 specifically, no.

25 MR. CASSETTA: I object as to the form of

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1 that last question.

2 BY MR. MIGLIORI:

3 Q. So with respect to both of those
4 depositions, it is your testimony that you do not
5 disagree with any of their opinions in particular; is
6 that correct?

7 MR. CASSETTA: Counsel, the Father's
8 testimony is what it is. I don't characterize it.

9 BY MR. MIGLIORI:

10 Q. You can answer the question.

11 A. Okay. Let me rephrase. There is nothing
12 that I recall specifically with which I would
13 disagree.

14 Q. When you were provided those depositions,
15 were you told why you were asked to review those
16 documents?

17 A. Other than the fact that they were part
18 of the Oklahoma, they are getting a broader sense for
19 what was going on in Oklahoma, and I was in fact
20 particularly interested in Dr. Richmond's deposition
21 because of not only the case but the broader
22 interests I have in health policy and law, and things
23 like that.

24 Q. Did you agree with Dr. Richmond's
25 assessments of the problems with public health

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1 policy?

2 A. Many, yes.

3 Q. Are there any that you disagree with?

4 A. No. I think I would probably have -- my
5 disagreement would have been more minor since I would
6 emphasis certain things over other things.

7 Q. Did you ask for those two depositions?

8 A. Ask in the sense in talking with
9 Mr. Cassette ahead of time. He mentioned them,
10 talked about them. I said I would like to see them.
11 Yes.

12 Q. Did Mr. Cassetta ask you to review any
13 other documents prior to this deposition today?

14 A. No.

15 Q. Have you reviewed anything aside from
16 those two depositions in order to prepare for your
17 deposition today?

18 A. No.

19 Q. Since March of 1997, have any of your
20 appointments with Georgetown University changed?

21 A. No, I don't believe so.

22 Q. You are still assistant professor of
23 ethics?

24 A. Right.

25 Q. And you are still an assistance professor

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1 in the medical school?

2 A. Yes.

3 Q. And have you yet applied for tenure?

4 A. It is in process, yes. The application
5 has gone on now.

6 Q. And do you anticipate when that process

7 will have reached its conclusion?

8 A. Sometime this year. The university
9 bureaucracy, they are hoping. They put a new system
10 in and they are hoping to move things more quickly
11 than they have in the past. But they have been
12 notoriously slow in the past.

13 Q. You have actually filed your application?

14 A. Yes.

15 Q. But you are still an assistant professor?

16 A. Yes.

17 Q. That's different from an associate
18 professor?

19 A. It is.

20 Q. What is the difference between the two?

21 A. It is a difference in rank. You move to
22 associate professor once tenure. It also means
23 greater compensation.

24 Q. How about with the Kennedy Institute, has
25 your affiliation with the Kennedy Institute changed

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1 since March of 1997?

2 A. No. I am associate director. This is
3 the third of a three-year term on that contract.

4 Q. How did you get affiliated with the
5 Kennedy Institute?

6 A. I was appointed to them when I came to
7 Georgetown by a vote of the membership by the members
8 of the institute. I was appointed initially as a

9 senior scholar to the institute, and then this is the
10 third year. Two years ago I was asked by the faculty
11 and others to serve as associate director of the
12 institute for a three-year term.

13 Q. So, when that three-year term ends, you
14 will continue as a senior scholar?

15 A. Most likely, unless I change jobs
16 entirely.

17 Q. Are you anticipating doing that?

18 A. No.

19 Q. That I guess will depend on the tenure?

20 A. That would depend on the tenure, right.

21 Q. What is the relationship between the
22 Kennedy Institute and Georgetown University?

23 A. The institute is a research institute of
24 the university. Like many people in the institute,
25 my tenure affiliation comes through the philosophy

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1 department of the university.

2 So, it is basically the faculty members
3 have appointments within existing departments of the
4 university. Also the institute runs the national
5 bioethics library, which is a contract from the
6 National Library of Medicine. So it's the research
7 unit within the university.

8 Q. Who is the current director?

9 A. Dr. Leroy Walters.

10 Q. Was he recently appointed director?

11 A. He and I were appointed at the same time

12 two years ago now for a three-year term.

13 Q. Who is Dr. Peligreno?

14 A. Dr. Edwin Peligreno is a former director
15 of the institute. He is currently the director of
16 yet another center within the medical center called
17 the center for clinical bioethics.

18 Ed is still a member of the Kennedy
19 Institute. He is also serving this year as director
20 of the Center of Clinical Bioethics. He also has a
21 professorship. I think it is the John Carroll
22 professorship of medicine.

23 Q. Are you involved with the Institute of
24 Clinical Bioethics?

25 A. Yes, I am. I am a member of the faculty.

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1 Q. Is there a title for that appointment?

2 A. I think it's also senior ethicist, or
3 something like that. Largely what that does, that is
4 through that unit that I do teaching in the medical
5 school and I do consultation. We do a consultation
6 service for the hospital.

7 Q. Has any of those appointments changed
8 since March of 1997?

9 A. No.

10 Q. Have we listed all of your appointments
11 with Georgetown University?

12 A. Yes.

13 Q. Do you consider yourself a scientist?

14 A. In terms of the hard sciences like
15 chemistry or biology or things like that, no.
16 Q. Do you consider yourself a scientist in
17 any other sense?
18 A. Science in a broad sense of somebody who
19 studies systematic knowledge, ethics. In one sense
20 any discipline is a science.
21 Q. So to the extent that any discipline is a
22 science you are a scientist?
23 A. I'm a scientist, right.
24 Q. But otherwise?
25 A. Otherwise I am not.

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1 Q. Do you have any training in the hard
2 sciences?
3 A. No.
4 Q. You said you are an assistant professor
5 in the medical school?
6 A. Yes.
7 Q. In the medical school, you have not
8 applied for tenure?
9 A. The medical appointment is a secondary
10 appointment. It will rely on my tenure. The tenure
11 lies through the philosophy department.
12 Q. If you are tenured in philosophy, you
13 will be tenured in the medical school?
14 A. Yes.
15 Q. And you become an associate professor in
16 both?

17 A. Right.

18 Q. In the medical school, have you taught
19 any courses in any of the hard sciences?

20 A. No. My teaching is in areas of
21 bioethics.

22 Q. So the scope of your expert testimony in
23 this action is what?

24 A. Most my testimony is around areas of
25 bioethics and also with which I think is related to

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1 that or part of that is areas of science and public
2 policy as part of that.

3 Q. When you are talking about science you
4 are talking about the hard sciences?

5 A. Actually most of my focus has been on
6 medicine, health care sciences in that regard.

7 Q. What was your training in medical health
8 care sciences?

9 A. My training is as a philosopher of
10 medicine, who looks at the interaction between the
11 science and larger social questions, issues of social
12 regulations, social policy, things like that.

13 Q. So it is medical institutions more than
14 the hard sciences?

15 A. Yes.

16 Q. So, in that sense, you are not offering
17 yourself as an expert in hard sciences?

18 A. Absolutely not.

19 Q. And you don't speak on behalf of
20 scientists in the hard sciences?

21 A. Right, correct.

22 Q. And you don't pretend to have special
23 knowledge of traditions or -- strike that -- you
24 don't pretend to have any kind of special knowledge
25 as to the values within the scientific community?

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1 MR. CASSETTA: Object as to the form of
2 that question.

3 THE WITNESS: I'm not sure what you mean
4 by "values," I guess.

5 BY MR. MIGLIORI:

6 Q. Do you feel that you can speak on behalf
7 of scientists of the hard sciences when it comes to
8 any issues involving scientific methodology?

9 MR. CASSETTA: Again, object as to the
10 form of that question.

11 THE WITNESS: I think what I can speak to
12 is -- try this as a broader and see if this helps. I
13 think science is also contextualized, the practice of
14 science, within a broader social context. I think
15 that I am able to speak to, not so much sort of
16 within the discipline but as somebody who from
17 without the discipline can look at it and raise
18 questions.

19 BY MR. MIGLIORI:

20 Q. Do you have any courses or do you have
21 any training in scientific research?

22 A. No.

23 Q. Do you have any training whatsoever in
24 epidemiology, pathology or oncology?

25 A. No.

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1 Q. In any area of hard sciences?

2 A. No.

3 Q. Do you belong to any societies that are
4 societies of any of the hard sciences?

5 A. No.

6 Q. How do you define hard science?

7 A. I am using what I would take to be sort
8 of a common usage on the hard sciences being sciences
9 like chemistry, physics, biology, where there is very
10 reliable or often reliable hard data as opposed to
11 and the distinction is usually made out that there
12 are the soft sciences, sociology, psychology, things
13 like that, where the data is less clear; hence, there
14 often there is slang division between the hard
15 sciences and soft sciences.

16 Q. And if you would affiliate yourself with
17 one of those two groups it would be the soft
18 sciences?

19 A. Yes. Even there probably my intellectual
20 affiliation with philosophy which some people in the
21 soft sciences would not want to include as well. So
22 it is not even a soft science.

23 Q. But sort of a general contextual

24 understanding?

25 A. Right.

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1 Q. Okay. Has anything changed in your
2 Catholic affiliation since March of 1997?

3 A. No.

4 Q. Have you taken your final vows yet?

5 A. No. I am about to begin a process for
6 that as well.

7 Q. What sort of tenure of Catholicism?

8 A. Well, in the Society of Jesus --
9 actually, it's a funny thing -- in the Society of
10 Jesus I took vows in 1978, which are considered the
11 legalism, which are considered perpetual, and 10
12 years later I was ordained.

13 In the Jesuits there is a process that
14 one goes through later on, and at some point and
15 makes what they call solemn profession. I am still
16 not clear what exactly changes when that happens.
17 But I am getting ready to engage in that process.

18 Q. In your March '97 testimony, did you
19 refer to that as the final acceptance of the Society?

20 A. Yes, I believe I did. That is the often
21 the way they talk about it.

22 Q. As of this point you have not finally
23 been accepted?

24 A. Right. They can still ask me to leave, I
25 guess.

1 Q. Okay. Is that process as difficult as
2 your tenure experience?

3 A. No, it is a whole different process in
4 the sense that one makes a retreat, and it is a much
5 more spiritual process. I am beginning that. It is
6 over a two-year period.

7 Q. So you have begun that?

8 A. I am beginning actually this weekend.

9 Q. So you anticipate a completion of that
10 process within two years?

11 A. Right.

12 Q. Have you spoken with any other experts in
13 the tobacco litigation at any time prior to today's
14 deposition?

15 A. Not to my knowledge, no.

16 Q. Have you spoken directly with anybody
17 from any of the defendant entities, corporations or
18 firms aside from your lawyers?

19 A. Right.

20 Q. Have you spoken to anybody from the CTR,
21 for example?

22 A. No.

23 Q. Have you asked to speak with anyone
24 directly in any of the corporate entities that are
25 being sued?

1 A. No.

2 Q. Have you reviewed any internal documents
3 of any of these entities, these defendants?

4 A. No.

5 Q. Have you reviewed any primary sources, if
6 you will, any documents that were either originated
7 by one of the defendants or received by one of the
8 defendants?

9 A. No, not to my knowledge.

10 MR. CASSETTA: I object as to the form of
11 that question.

12 BY MR. MIGLIORI:

13 Q. Do you understand my question?

14 A. I think so. And I think the answer is no
15 if I understand the question correctly.

16 Q. Why do you think the answer is no?

17 A. Other than the documents that I have
18 reviewed here, I haven't -- this is an accurate
19 listing of what I have reviewed.

20 Q. And when you say these, you are talking
21 about Plaintiff's Exhibit 1?

22 A. Yes, plus the two --

23 Q. And the two depositions?

24 A. Right.

25 Q. Of those documents you have just referred

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1 to, how many of those are documents that were in your
2 possession prior to being asked to serve as an expert

3 in the tobacco litigation?

4 A. I have to go through and do some
5 counting, but very few. There were some, for
6 example, articles that appeared in the Journal of the
7 American Medical Association, things like that, that
8 I had just read over the years and accumulated in my
9 file.

10 Q. What percentage of those documents were
11 documents that were selected and given to you?

12 A. Of the total list?

13 Q. Yes.

14 A. Mostly the documents that were either
15 selected or documents that I asked to see for various
16 reasons.

17 Q. When you say most, can you give a
18 percentage?

19 A. I would say 85 percent.

20 Q. And of those 85 percent, when you say
21 they were selected, they were selected by the Shook,
22 Hardy law firm?

23 A. Yes.

24 MR. CASSETTA: Object as to the form of
25 the question.

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1 BY MR. MIGLIORI:

2 Q. I won't even limit it to Shook, Hardy.
3 They were selected for attorneys for any of the
4 tobacco defendants?

5 A. Yes.

6 Q. Outside of tobacco and outside of the
7 Texas Women's case, I believe you also referred to
8 the Saint Joseph's Hospital case in your March '97
9 deposition. Aside from those matters, have you been
10 retained as an expert in any other matters, legal
11 matters?

12 A. No.

13 Q. In your March 1997 deposition you
14 referred to people that you know who have illness
15 that, to use your term, that is somehow connected
16 with their use of tobacco products; is that correct?

17 A. Yes.

18 MR. CASSETTA: Object to the form of the
19 question.

20 BY MR. MIGLIORI:

21 Q. And your answer is?

22 A. Yes.

23 Q. And you said that you also knew people as
24 of that time who had passed away as a result of some
25 connection between tobacco use; is that correct?

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1 A. Yes.

2 MR. CASSETTA: Again object as to the
3 form of that question.

4 BY MR. MIGLIORI:

5 Q. Have you since March of '97 encountered
6 people that have development illness as a result or
7 connected to their use of tobacco products?

8 MR. CASSETTA: Object as to the form of
9 the question.

10 THE WITNESS: None to my knowledge.

11 BY MR. MIGLIORI:

12 Q. So in the past year and a half, you
13 haven't met anybody who is sick because of tobacco?

14 MR. CASSETTA: Object as to the form.

15 THE WITNESS: No.

16 BY MR. MIGLIORI:

17 Q. Since March of '97 have you administered
18 the sacrament of anointing of the sick?

19 A. I think twice.

20 Q. And as far as you know nobody you have
21 encountered has had any tobacco-related illness?

22 MR. CASSETTA: Again object to the form
23 of that question.

24 THE WITNESS: Most of cases were as a
25 priest I have encountered. I have been actually

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1 almost all of them have been cases that had end-of-
2 life decision making issues or some child birth
3 issues early on or health care.

4 BY MR. MIGLIORI:

5 Q. Are you a member of a parish?

6 A. No. I exercise my sacramental -- I do
7 help out occasionally at parishes around the area, if
8 there is need, and I do -- at the university we run
9 a -- we support the campus ministry. I celebrate

10 mass there on Sunday.

11 Q. Is that the only place you serve mass?

12 A. Unless we get a call -- sometimes it will
13 happen we get a call that parish so and so needs a
14 priest this Sunday. Can anybody go out there and say
15 mass? Something like that I will do.

16 Q. As an expert in this litigation, is your
17 role as a Catholic priest in any way involved or
18 impacted upon your testimony?

19 A. No.

20 MR. CASSETTA: Object as to the form of
21 that question.

22 THE WITNESS: No.

23 BY MR. MIGLIORI:

24 Q. In other words, do you separate your role
25 as a Catholic priest from your role as an ethicist?

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1 A. Yes.

2 Q. Is that an important distinction in terms
3 of your opinions and your feelings about the role of
4 ethics in this litigation?

5 A. Yes.

6 Q. Why?

7 A. It is not a distinction that is hard to
8 make, at least vis-a-vis Catholicism in part because
9 Catholicism at least in principle has always thought
10 that ethics is something that transcended faith
11 commitments.

12 So it has always held a view, or at least

13 close to always, that ethics was something that went
14 beyond. You didn't have to be a believer in order to
15 make ethical judgments or denote things.

16 So in that sense a lot of what we would
17 now call moral theology has really been philosophy in
18 the course of it. So, while I have published in
19 theological journals, for example, like theological
20 studies, largely I published as a philosopher
21 bioethicist looking at issues that have been part of
22 the Catholic tradition, or something like that.

23 Q. Do any of your views or opinions that you
24 express as an ethicist conflict with the vows that
25 you have taken as a Catholic priest?

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1 A. Not with the vows that I have taken. The
2 vows are very specific to one's way of life in terms
3 of celibacy, obedience and poverty.

4 I do have -- conflict is not the right
5 word -- I have strong disagreements with elements of
6 the church's tradition about how one understands
7 society generally and the role of government
8 sometimes.

9 Q. Can you give me an example of your strong
10 disagreement?

11 A. Sure. Simply put, I mean, because I
12 don't want to do a lecture, the church has a long or
13 at least a dominant tradition -- there have always
14 been dissenting voices -- but a dominant tradition of

15 about of a view that I would call a robust view of
16 government and its role in enforcing, not just sort
17 of the normal laws that we would think of but also
18 enforcing moral law as well.

19 I understand the historical development
20 of that tradition. I think we are in at least in
21 places like the United States we are in a different
22 age and time when that is a less tenable position to
23 hold, and I have argued that the church needs to
24 rethink its view of government and what it thinks
25 government should be doing.

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1 Q. What do you consider moral law?

2 A. For example, I think the church would
3 want to see -- I mean traditionally has wanted to see
4 laws around sexual behavior enforced, and I think it
5 is less plausible to regulate those behaviors by law.

6 Q. Why?

7 A. Why? In part because at least in typical
8 American society we have a society that is very
9 morally diverse, doesn't share a lot of the basic
10 assumptions that you need to have to get certain
11 views about certain positions, and so it really
12 becomes the government sort of coercively intervening
13 to make people behave in certain ways. Even St.
14 Thomas in the Middle Ages said law needs to have some
15 basis of consensus before it, and I think the
16 consensus, the underlying consensus isn't there.

17 Q. So when you are talking about the church

18 wanting to enforce or wanting governments to enforce
19 moral law, are you talking about the laws that go to
20 things like abortion?

21 A. Uh-huh.

22 Q. And your position on whether or not
23 government should enforce laws on abortion is what?

24 A. My position is that while I think
25 abortion is wrong, I don't think that the solution to

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1 the issue of abortion or the role of abortion in
2 society is to have government enforcing or passing
3 and enforcing laws that prohibit abortion.

4 Q. So the government should not enact any
5 legislation whatsoever relating to abortion?

6 A. That would be my general view, yes.

7 Q. And that's because it is based on
8 morality?

9 A. Because in order to have a consensus for
10 that kind of a law, there needs to be larger
11 consensus about how we understand the nature of the
12 fetus, how we understand the right of the woman to
13 choose, and I think that is one of the things that
14 it's painfully clear that we don't have a consensus
15 on.

16 Q. So in a pluralistic society where you
17 can't ascertain a consensus, the government should
18 have no role in enacting legislation for enforcing
19 laws relative to those?

20 A. Particular areas, right.

21 Q. So, it is not just abortion but it would
22 have to do with -- well, you have testified to this
23 in your March '97 deposition; is that correct?

24 A. Yes.

25 Q. And your testimony in that deposition in

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1 March of 1997 is unchanged; correct?

2 A. Yes.

3 Q. The sum and substance of your deposition
4 in the Mississippi tobacco action is valid today?

5 A. Yes.

6 Q. And it remains to be your opinion?

7 A. Yes.

8 Q. Does that discussion you just had relate
9 into or factor into the distinction you make in your
10 disclosure been normative and non-normative ethics?

11 A. That would be part of it, yes.

12 Q. Could you define those in more detail
13 than your disclosure? What is the difference between
14 normative and non-normative ethics?

15 A. Let me start. One thing you say ethics
16 or ethicists do is they describe things. That would
17 be the non-normative sense.

18 You know the analogy I often use is
19 sometimes it's part of the work of ethics is like
20 doing geography. Show you a map. You know, you can
21 take a topic like abortion or assisted suicide, sort
22 map out the various positions that people hold.

23 That is the descriptive, so it is not
24 arguing for a particular norm or a point of view.
25 That would be the non-normative.

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1 The normative would be to take an
2 approach that ultimately would come down to say that
3 there are certain things that ought to be done, that
4 are norms that ought to be imposed.

5 I think the difficulty in a secular
6 society, that is in fact morally diverse, is that the
7 scope of normative ethics is relatively small,
8 because in fact there is just not the kind of moral
9 consensus that one needs to build.

10 So I think a lot of times what ethicists
11 do is they do do in fact a lot of non-normative
12 work. They describe. They might be able to point
13 out inconsistencies. You know, if you articulated a
14 position I might be able to redescribe it to you and
15 say now that you hold this, might be inconsistent
16 with something else you said earlier, things like
17 that.

18 Q. Is the role of the ethicist to only work
19 in the non-normative?

20 A. No. No. I said I think there is what I
21 would call a small scope of various of normative
22 ethics in a secular society, and I don't think the
23 ethicists would be necessarily excluded nor is anyone
24 excluded from working in that area. I tend to think

25 that it is a relatively smaller area than a lot of

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1 people would want to have.

2 Q. So the normative or what you call a
3 prescriptive so the ought-to-or-should-not-have kind
4 of judgments, if you will, ethicists do have some
5 business, if you will, venturing into that area;
6 correct?

7 A. Right.

8 Q. So it is not your testimony that
9 ethicists should only speak in the non-normative?

10 A. Right.

11 Q. They can in fact speak in the normative?

12 A. They can, right. My only caveat is I
13 think that the area of the normative in a society
14 like ours is relatively constrained or just de facto,
15 it is relatively constrained.

16 So I think a lot of times what ethicists
17 actually do do is much more than the non-normative
18 descriptive, which in fact I think is a service.

19 I think part of what is to use a quick
20 example, I think there's a lot of confusion out there
21 about public and private morality these days. And
22 without making a judgment about a particular issue, I
23 think helping people to map out what their positions
24 are and how they see things I think that's a great
25 service.

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1 Q. Does that service belong in the
2 courtroom?

3 A. I think you can do that service in the
4 courtroom, sure. You can help people map that out.

5 Q. And can you also in the courtroom say
6 whether or not somebody should have or should not
7 have done something based on ethics?

8 A. I think a lot of that in part depends on
9 what the topic is. And where I have always been
10 hesitant to affirm that role is for the following
11 sense.

12 I think a lot of what we can talk about
13 normatively in a secular society, you don't have to
14 be an ethics expert to figure that out. If somebody
15 makes a promise to somebody else, whether it is in a
16 written form of a contract, or something like that,
17 and fails to keep the promise, you don't need an
18 ethics expert -- I can't even talk -- to figure that
19 out in a certain sense.

20 Q. But an ethics expert could figure it out?

21 A. Sure.

22 Q. So could a juror, for example?

23 A. Exactly.

24 Q. And so could a judge?

25 A. Judge, a lawyer.

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1 Q. And a lawyer could argue certainly?
2 A. Sure.
3 Q. And so you refer to, for example,
4 contracts, whether or not somebody breached or
5 violated a contract. That is something that even a
6 juror could make a normative ethical judgment on?
7 A. Right.
8 Q. What about violation of a statute?
9 A. I think that sure, there is a -- I think
10 once people understand what the statute is, you know,
11 I think those kinds of things.
12 Q. So the lay person could make a normative
13 ethical judgment on violating a statute provided that
14 the juror was fully informed on the statute?
15 A. Yes.
16 Q. Would that also apply to things like
17 common law? Do you know what common law is?
18 A. Only in the most layman's view of the
19 world.
20 Q. So cases that judges decide and
21 ultimately become precedential in their value, those
22 cases if properly explained to jurors or to lay
23 people, such lay people or jurors could make
24 normative ethical judgments based on the conduct of
25 the person?

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1 A. Involved in the cases, sure.
2 Q. So essentially my questions relating to
3 all this are normative and non-normative ethics are

4 not just the domain of ethicists?

5 A. I would suggest that normative ethics is
6 the domain of everybody in many ways. I think in
7 some ways, the non-normative is probably more the
8 domain of the professional ethicist in the sense that
9 later today I am going to teach a class on
10 utilitarianism to undergraduates.

11 So part of this is the mapping out,
12 getting to understand certain concepts, and things
13 like that. So I think in some ways the non-normative
14 is probably more the domain of the professional
15 ethicist.

16 Q. But certainly everybody can -- if the
17 normative is the domain of everybody, certainly that
18 would include ethicists?

19 A. Sure.

20 Q. So people can say, would-have, should-
21 have, based on their information and what is provided
22 or what they understand to be the context of the
23 ethical question?

24 A. Yes.

25 Q. Is there a credentialing process for

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1 ethicists?

2 A. No.

3 Q. So, when you say that you are an
4 ethicist, that is based on your training as a
5 philosopher?

6 A. Yes.

7 Q. And that's basically you go to college,
8 you go to graduate school and you get a Ph.D. in
9 ethics?

10 A. Yes.

11 Q. Or I'm sorry. You get a Ph.D. in
12 philosophy?

13 A. Right, in philosophy.

14 Q. And, therefore, you are credentialed in
15 your area as an ethicist?

16 A. Right.

17 Q. So, normative and non-normative ethical
18 opinions you said are not the domain of just
19 ethicists, that is correct?

20 A. True.

21 Q. And because of no credentialing process
22 they are not the domain of credentialed ethicist? .
23 Obviously there is no credentialing process?

24 A. Right.

25 Q. That was a little confusing. I

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1 apologize.

2 A. I'm getting all the negatives lined up.

3 Q. What I am trying to just establish,
4 though, and from the reading of your disclosure I
5 want to make sure I understand. It is not your
6 opinion that only an ethicist can make normative
7 ethical judgments?

8 A. That is absolutely my opinion, right. To

9 expand, I have questioned whether or not there is --
10 there probably is a role, but I think it is very
11 narrow in terms of what the ethics expert in fact
12 does bring to the table in all of this, because I
13 think that normative moral judgments is the work of
14 all of us.

15 Q. Including the ethicist?

16 A. Including the ethicist.

17 Q. The professional ethicist?

18 A. Right. But I don't know that the
19 professional ethicist when it comes to my saying, you
20 know, ought to do this, or you should not do that, or
21 you oughtn't to do that, I don't know that I bring in
22 the end any more to the judgment than any other human
23 being.

24 Q. Other than the fact that you as a
25 professional ethicist would be able to identify the

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1 ethical dilemma probably more readily because of your
2 non-normative ethical sensitivities?

3 A. One would hope that were the case. In a
4 better world that would be. But I think ethicists
5 like all human beings can suffer from blindness as
6 well, especially if the ethical issue is close to
7 home.

8 MR. MIGLIORI: Do you want to take a
9 break?

10 MR. CASSETTA: We can take a break if you

11 would like.

12 MR. MIGLIORI: It is a natural place for

13 me to do it.

14 MR. CASSETTA: Sure.

15 VIDEOGRAPHER: We're off the record at

16 9:24.

17 (Recess.)

18 VIDEOGRAPHER: We are back on the record

19 at 9:36.

20 BY MR. MIGLIORI:

21 Q. Father, I just wanted to shift gears a

22 little bit and ask you questions about your list of

23 opinions.

24 A. Okay.

25 Q. This is something that you authored;

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1 that's correct?

2 A. Right.

3 Q. This is Exhibit Number 2 and it starts

4 with the second page.

5 A. Okay.

6 Q. You indicate in the first paragraph or

7 you refer to traditional and appropriate definition

8 of scientific misconduct. What do you refer to when

9 you say the traditional definition of scientific

10 misconduct?

11 A. Misconduct has been sort of very strictly

12 defined in terms of either plagiarism or fraud. I

13 think the reason I used the word traditional is

14 because there has been some open discussion about
15 whether or not we need a broader definition. In
16 fact, there was an effort a few years ago to try to
17 broaden the definition.

18 To date we haven't moved very far with
19 that. So that is why I used that notion of
20 traditional.

21 Q. What kind of resources would you use as
22 somebody who is not a member or doesn't affiliate
23 themselves with the soft or hard sciences --

24 A. Right.

25 Q. What kind of resource would you use to

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1 determine what traditional and appropriate
2 definitions are of scientific misconduct?

3 A. There I was simply, if you will,
4 describing in a certain sense we have used in the
5 academic world, which would cover both hard, soft and
6 non-soft sciences about, about misconduct of being
7 either plagiarism or fraud.

8 And as I said -- and the only reason I
9 use the descriptor of traditionally is that is where
10 the definitions have been. There have been
11 discussion to expand the definitions but so far that
12 hasn't gone forward very far.

13 Q. Did you get this sense of tradition out
14 of conversations, out of reading?

15 A. Reading and conversation. One as being a

16 member of the academic community, you know there are
17 certain things that are quite clear about what's
18 understood to be a misconduct.

19 Also at the time in various journals
20 there were proposals to expand the definition of
21 misconduct. There has also been discussion, for
22 example, in academic publication about issues about
23 misrepresentation, conflicts of interests, questions
24 like that.

25 Again, those discussions have been going

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1 sort of around and around. We have not moved them
2 very far. So those are the kind of things that make
3 me aware of that.

4 Q. Based on that definition, it sounds to me
5 that you are talking about academic misconduct?

6 A. Academic, and I take science to -- I mean
7 it is hard to sort of draw strict boundaries on these
8 things.

9 But much of scientific enterprise, while
10 clearly there are elements in the private sector, but
11 much of scientific enterprise takes place in public
12 or academic domains as well or there are joint
13 ventures between public and academic institutions or
14 private and academic institutions.

15 Q. When you referred to scientific
16 misconduct in this first paragraph of your list of
17 opinions, you are specifically referring to hard
18 science, correct?

19 A. Yes, but the same problems would be part
20 of the social sciences as well, and plagiarism would
21 be part of any academic discipline.

22 Q. But when will you chose the words
23 "scientific misconduct" in this list of opinions you
24 were specifically referring to allegations about
25 scientific misconduct in the tobacco industry?

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1 A. Yes.

2 Q. And you have not reviewed any documents
3 relative to any research taken or any research
4 undertaken by any of the tobacco defendants?

5 A. That's correct.

6 Q. You have not reviewed any documents
7 relating to tobacco research?

8 A. Other than anything that is listed in
9 this number 2, number 1, no.

10 Q. And I think I remember from your
11 March '97 deposition that you specifically did
12 not ask for industry internal science documents; is
13 that correct?

14 A. That's correct.

15 Q. So it is fair to say that you have not
16 reviewed them at all?

17 A. Right.

18 Q. Other than what is listed in Exhibit 1?

19 A. Right.

20 Q. What is your definition of the interest-

21 driven and adversarial nature of the scientific
22 process?
23 A. I think that if you look at people who
24 have done work in philosophy of science and history
25 of science, part of what I am getting at is there

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1 this notion that people for various reasons take
2 interest in different parts of scientific dilemmas
3 and they pursue them, and often times the process by
4 which scientific knowledge develops and moves forward
5 is it is more a process of controversy and adversary,
6 back and forth, until you get scientific ideas
7 established and then often times there are
8 changeovers in those ideas. There's paradigm along
9 the way.

10 Q. So the ultimate goal of that you would
11 say or you would refer to some kind of consensus?

12 A. Consensus, but always the notion that
13 always with the view, particularly in medicine this
14 is most obvious, I think, in many areas, that the
15 consensus is open to being tested, being adversely
16 confronted by new evidence, things like that.

17 Q. So you necessarily view the scientific
18 process, and again we are talking about the hard
19 sciences, the scientific process as an adversarial
20 process?

21 A. In a sense -- let me just put one
22 clarifier -- in the sense that the adversarial
23 process is part I think of the scientific process.

24 Q. Do you feel that there is any science out
25 there that is value free or not interest driven?

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1 A. No.

2 Q. All sciences are interest driven?

3 A. In some respect, yes.

4 Q. And that is related to its funding?

5 A. It's related to funding. It's related to
6 just basic human interests.

7 The values or interests even if you take
8 sort of a very simple example of the scientist, let's
9 say he or she doesn't need any funding from anybody,
10 but their research in part will be driven by their
11 interests, what attracts them, why do some people
12 want to study certain things versus other things.
13 There is always a level of interest that's involved
14 and value to everyone.

15 Q. But that's their interest in choosing to
16 go to the scientific experiment or process in the
17 first place?

18 A. Right.

19 Q. The outcome of that scientific process,
20 is it your testimony that all of that is interest
21 driven?

22 A. I think that this is where there is an
23 interest driven in the whole thing, because I mean
24 examples of this would be things like where somebody
25 gets so attached to a particular theory of

1 explanation or particular explanation that they fail
2 to notice other things. I think that is just part of
3 human nature.

4 This is why ultimately the sharing of
5 evidence becomes important to the social process of
6 science. If I have a theory about disease X and I
7 pursue it and I think I have proven my theory and I
8 have a way to deal with the disease, it becomes very
9 important that I then be able to share that when I am
10 convinced that it is true so that other people can
11 try it, replicate it, and things like that. Does
12 that make sense?

13 Q. The statement that you authored here,
14 though, in your list of opinions when you talk about
15 the interest-driven nature of scientific process, and
16 that is again in the first paragraph of the first --

17 A. Okay.

18 Q. That is in reference to your testimony in
19 this tobacco litigation, correct?

20 A. Uh-huh.

21 Q. So is it your testimony that the
22 scientific process within the tobacco industry is
23 necessarily interest driven and adversarial in
24 nature?

25 MR. CASSETTA: Object as to the form of

1 the question.

2 THE WITNESS: I wouldn't just confine to
3 it the tobacco industry as well. I think my
4 inscription is that all science in some way or other
5 has interests which drive it.

6 Government agencies conduct research. I
7 mean, conduct research also out of interest in a
8 certain way. They have interest in other areas of
9 interests as well.

10 This is why ultimately the public testing
11 and sharing of knowledge becomes important to the
12 larger process of science.

13 BY MR. MIGLIORI:

14 Q. What is your understanding of the
15 interests that drives the tobacco industry's research
16 on tobacco and health?

17 MR. CASSETTA: Again, object as to the
18 form of that question. When you say tobacco industry
19 research, there are a lot of elements that are
20 research funded by the tobacco industry.

21 MR. MIGLIORI: That's right. And that is
22 why I am asking his understanding.

23 THE WITNESS: Right. I think the
24 interests -- there's probably a range of interests
25 that's at stake here. One, obviously there is

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1 putting a commodity out that they want to be able to

2 sell. At the same time there is a question of
3 research, for example, is undertaken about making
4 safer cigarettes, and things like that, trying to
5 find out as to the best you can what is the
6 relationship between smoking and various disease.

7 So, there is a range of interests that
8 would be a part of this research I would think. And
9 at the same time you have other agencies, government
10 agencies, private agencies that would also have
11 interests in looking at some of the same questions.

12 BY MR. MIGLIORI:

13 Q. Of the government agencies that you are
14 referring to, are you necessarily saying that they
15 are adversarial to the interests of the tobacco
16 industry?

17 A. No. When I say adversarial, I think they
18 also have interests in what they are promoting as
19 well. I think, for example, it would be naive to
20 think that federal research and research agencies in
21 some ways don't have a certain amount of
22 self-interest in promoting their own findings and
23 promoting their own budgeting, their own regulatory
24 interest. When I say interest driven, there is often
25 sort of crucial motives underneath any undertaking.

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1 Q. You said in your introductory paragraph
2 again under summary of opinions that you are expected
3 to testify as an expert in the involvement of the
4 tobacco industry in the smoking and health

5 controversy.

6 What documents are you relying upon in
7 order to provide expert opinion about the tobacco
8 industry in the smoking and health controversy?

9 A. Aside from the documents that have been
10 listed already, just my large, not so much documents,
11 but my training in terms of my interests in the
12 philosophy of medicine and development of health
13 policy, understanding health and disease, health
14 policy, areas like that that I have been looking at
15 for some time.

16 Q. Aside from what you have listed in
17 Plaintiff's 1 you have not read any tobacco industry
18 documents relative to smoking and health?

19 A. No.

20 Q. Are you familiar with the Tobacco
21 Institute?

22 A. The institute, yes. At least the name of
23 it, yes.

24 Q. Have you ever read their publication in
25 1979 called "The Continuing Controversy"?

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1 A. I don't believe I have.

2 Q. When you refer in that same paragraph to
3 the scientific process in general, are you talking
4 about the hard sciences again?

5 A. I wouldn't just talk about the hard
6 sciences. I would think the soft sciences -- the

7 sociologists I know will kill me -- the people in the
8 softer sciences have the same aspirations and
9 methodologies as well.

10 Q. In whole paragraph, you start off by
11 saying that you are expected to testify as an expert
12 in these areas?

13 A. Right.

14 Q. I want to make sure I understand. You
15 have absolutely no training in the soft or hard
16 sciences, correct?

17 A. As a disciplinary training, no.

18 Q. And you have never testified as an expert
19 in the soft or hard sciences in any other matter,
20 right?

21 A. That's correct.

22 Q. Has the Kennedy Institute of Ethics
23 dealt with or published anything recently since
24 March of '97 relative to tobacco and health?

25 MR. CASSETTA: Object to the form of that

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1 question. The institute itself -- well, I object to
2 the form of the question.

3 THE WITNESS: No.

4 BY MR. MIGLIORI:

5 Q. Do they have a periodical?

6 A. We publish a journal called the Kennedy
7 Institute of Ethics Journal. It is a peer reviewed
8 publication largely in the area of bioethics.

9 Q. Has your involvement with the Kennedy

10 Institute of Ethics included any issues or topics
11 whatsoever relative to tobacco and health?

12 A. No.

13 Q. When you say in the second paragraph --
14 again we are on the same page, numbered page 2 --
15 that is the first page of your summary of opinions --
16 in the second paragraph you say that you are expected
17 to base your testimony or rely upon company documents
18 used by plaintiff.

19 Are any of those documents documents
20 which have not been identified in Plaintiff's
21 Exhibit 1?

22 A. To the best of my knowledge, no.

23 Q. So all of the documents, aside from the
24 two depositions on Plaintiff's Exhibit 2, all of the
25 documents upon which you intend to offer testimony

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1 are listed specifically in Plaintiff's Exhibit 1?

2 MR. CASSETTA: I object as to the form.
3 Included in his disclosure statement is that he will
4 comment upon the opinions of other witnesses. So to
5 the extent that other witnesses testify he may
6 comment on that.

7 MR. MIGLIORI: Okay. That was not my
8 question.

9 BY MR. MIGLIORI:

10 Q. My question was whether you intended to
11 rely upon any documents modifying testimony, any

12 documents that are not specifically detailed in
13 Plaintiff's Exhibit 1 or 2?
14 A. Right. No. No.
15 Q. So, this sentence is referring to
16 documents that are specifically identified in the
17 other exhibit?
18 A. That's correct.
19 Q. On page -- I apologize for the quality of
20 this exhibit.
21 A. That's quite all right.
22 Q. On the next page, which starts off with,
23 "Father Wildes has authored or co-authored" --
24 A. Yes.
25 Q. It says, "over fifty articles and papers

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1 relating to medicine, ethics, and philosophy."
2 A. Yes.
3 Q. Are any of those articles or papers
4 relating to tobacco and health?
5 A. Not directly. The only two that might
6 have some interest would be the one with The New York
7 Times op-ed piece business about medicalization, and
8 the others. There is a journal article, a recent
9 one, on ethics testimony.
10 Q. Is that --
11 A. But it's not. It is indirectly related
12 in that sense.
13 Q. And that is listed in your curriculum
14 vitae?

15 A. Yes.

16 Q. Are any of those articles or papers
17 related to scientific research and methodology?

18 A. No.

19 Q. Do you still serve in several editorial
20 capacities for The Journal of Medicine and
21 Philosophy?

22 A. Yes, I do.

23 Q. And it says several series books. Are
24 any of those books series or have you edited any
25 pieces for The Journal of Medicine and Philosophy

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1 relative to tobacco and health?

2 A. No.

3 Q. You then break down your opinions, and
4 you discuss in more detail this discussion we have
5 already had about normative and non-normative ethics?

6 A. Right, that's correct.

7 Q. You say in the second bullet: "Ethics
8 testimony in a secular, morally pluralistic society
9 is valid insofar as it is non-normative. Definitive
10 opinions based on normative ethics are generally
11 misplaced in a secular, morally diverse society such
12 as ours." Is that a correct reading, first of all?

13 A. Yes.

14 Q. When you say "definitive opinions," what
15 do you mean?

16 A. What I had in mind there was somebody

17 coming in as an ethics expert to say that was wrong.
18 I would argue and have argued that the expert has no
19 more expertise than anyone else at that point.

20 Q. So it is not your testimony that the
21 professional ethicist cannot give definitive
22 opinions; it is that his definitive opinion is the
23 same as any other person's would be?

24 A. Right.

25 Q. Certainly, an ethicist can offer a

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1 definitive opinion; correct?

2 A. Certainly.

3 Q. Just as a juror could have a definitive
4 opinion on a topic?

5 A. Certainly.

6 Q. So it is not entirely accurate then when
7 you say that "definitive opinions based on normative
8 ethics evidence are generally misplaced"? It is not
9 that they are misplaced. They are just not any more
10 valid, if you will, to use your term, than another
11 person's?

12 A. Than another person's, right.

13 Q. So to that extent you would not use the
14 word "misplaced"?

15 A. I would try to find some other language.
16 My point simply was to say that expert's opinion is
17 no worse but it is not better than anyone else's
18 opinion.

19 Q. But it is as valid?

20 A. It is as valid. But I was just trying to
21 get at the notion of expertise, so to speak. I think
22 where it would be "misplaced" insofar as someone
23 thought here's the ethics expert and they are going
24 to tell me what we ought to do, and that that should
25 be, to use an analogy, it was sort of like the old

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1 days when the priest told you what you ought to do
2 and that is what you did.

3 Q. But would you also agree, and we have
4 talked about this briefly, but would you also agree
5 that the professional ethicist probably is more
6 informed at the outset anyway as to the ethical
7 dilemma?

8 A. I think the professional ethicist does
9 bring, hopefully brings, both language that might be
10 helpful in ways of clarifying things that might be
11 helpful and hopefully brings a sense of the history
12 of ideas that would be helpful to clarifying these
13 things. So in that sense, yes, I hope they would
14 bring.

15 Q. When you say "helpful," you mean helpful
16 to a juror?

17 A. Helpful to a juror, helpful to anyone.

18 Q. Okay. So that that professional ethicist
19 could do both, could serve in the role of providing a
20 better understanding of the descriptive or the
21 non-normative ethical dilemma?

22 A. Yes.

23 Q. And then he, like the juror or anybody

24 else, could offer a normative opinion or a definitive

25 opinion about the ought to have or should not have?

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1 A. Sure. And maybe the operative word I

2 would need to revise here. The real problem is the

3 motion of definitive.

4 What I meant by definitive is if I was

5 offering my opinion as if it was the final answer on

6 this, as it were. The juror may have another opinion

7 or somebody else may have another opinion.

8 Yes, I think that expertise is in the --

9 I think what is often the most helpful thing is in

10 the "non-normative areas" of helping to lay out

11 issues, describe them, look at them, where are they.

12 When it comes to sort of the level of judgment this

13 is what the expert's, I think, opinion counts just

14 like everybody else's.

15 Q. Okay.

16 A. This is not excluded. But I don't think

17 there is any more to it. That's what I was getting

18 at. I think now as I am listening to it the word

19 "definitive" may be the more troublesome part at

20 this point.

21 Q. Well, I highlighted both, and that's why

22 I am concerned, because with the definitive

23 misplaced. And just so I understand ultimately the

24 professional ethicist could be very helpful, to use

25 your term, in providing the ethical question?

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1 A. Right.

2 Q. And it could be helpful to you and me or
3 to a juror or to anybody; correct?

4 A. Sure, describing the context.

5 Q. Yes.

6 A. Absolutely.

7 Q. And then certainly an expert or -- I'm
8 sorry -- a professional ethicist could provide his or
9 her opinion as to whether or not that conduct was
10 proper or ethical?

11 MR. CASSETTA: I object. It has been
12 asked and answered. Father Wildes has said that with
13 respect to normative the experts is just as good as
14 anybody else is, no more, no less.

15 BY MR. MIGLIORI:

16 Q. And that's true; correct?

17 A. That's correct.

18 Q. Okay. So, therefore, in the third bullet
19 in the very last sentence, you say: "Therefore,
20 normative opinions are generally not appropriate in a
21 court of law."

22 A. Uh-huh.

23 Q. You don't really mean to say that they
24 are not appropriate -- and correct me if I am
25 wrong -- you are saying that that is not the sole

1 definitive opinion, if you will?

2 A. Certainly.

3 Q. That's one opinion; is that correct?

4 MR. CASSETTA: Counsel, again, I object.

5 We're talking about -- Father Wildes has already
6 answered that in terms of calling something expert
7 testimony with respect to normative opinions that's,
8 you know --

9 MR. MIGLIORI: Apparently there are some
10 words chosen in the preceding bullet that needed
11 clarification, and to the extent that might have an
12 effect on the next bullet.

13 BY MR. MIGLIORI:

14 Q. I am asking you, Father, -- and if you
15 don't understand the question please ask me to
16 clarify it -- I am asking you that it is not a
17 question for you, then, of the appropriateness of a
18 normative opinion; it is the weight that you give
19 that opinion; correct?

20 A. Yes, and I think while -- again every
21 time I write something I see how I would revise it,
22 but again, it's my understanding that the ethics
23 expert's normative judgment is as good as and no
24 better than anyone else's at this point.

25 The other is I think, and this is a

1 larger philosophical discussion, is that the realm of
2 normative ethics is going to be fairly narrow in
3 scope in a society like ours which is very diverse.

4 Q. But the ethicist belongs in that realm
5 just as much as you and I do?

6 A. Right, absolutely.

7 Q. Knowing that I am not an ethicist and you
8 are.

9 A. Right.

10 Q. Okay. Can ethicists arrive at opposite,
11 two different ethicists arrive at opposite normative
12 opinions given the same ethical dilemma?

13 A. Yes.

14 Q. And those two opinions are as valid, they
15 just come out at different ends, correct?

16 A. That's correct. That's one of the
17 problems. You can see how the problem gets
18 aggravated.

19 Even if you took two people, who had real
20 expertise -- to use an at-home example, two moral
21 theological sharing enormous amounts of value
22 commitments structure can come out on an issue and on
23 a particular judgment with two, you know, different
24 opinions about what's appropriate or inappropriate.

25 If that's the case within a very tight

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1 system, so to speak, you can imagine how the range
2 would get even more devoted people would be getting

3 in different places.

4 Q. And in the courtroom it wouldn't be that
5 expert's domain, if you will, to arrive at the
6 ultimate conclusion or the ultimate answer, but it
7 would be the professional ethicist's role to present
8 the ethical dilemma and offer his or her opinion as
9 to the normative opinion, correct?

10 MR. CASSETTA: I object again. Counsel,
11 you are calling for a legal conclusion here. Father
12 Wildes has already testified that with respect to the
13 normative ethical opinions that an ethicist can add
14 no more or no less than what a layman can give.

15 BY MR. MIGLIORI:

16 Q. Father, did you understand my question?

17 A. Could we go through it again?

18 MR. MIGLIORI: Yes. Actually, I'm going
19 to ask the stenographer to read it back to us.

20 THE WITNESS: Okay.

21 (The reporter read the record as requested.)

22 BY MR. MIGLIORI:

23 Q. My grammar at the end failed me. But the
24 last part of that would be: It would be the
25 professional ethicist's role to present the ethical

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1 dilemma and then offer his or her particular
2 normative opinion once posed, once the ethical
3 dilemma is posed?

4 MR. CASSETTA: Again, I object. You are
5 calling for a legal conclusion here. It's the judge

6 who is going to decide whether that opinion on the
7 normative issue is, you know, appropriate expert
8 testimony.

9 BY MR. MIGLIORI:

10 Q. Father, I am asking if you understand the
11 question firstly, yes or no?

12 A. Yes.

13 Q. And secondly, in that you have provided a
14 statement as your opinion that it's not appropriate
15 in a court of law. I am asking you that question.

16 A. Right.

17 Q. I am not asking you your knowledge of the
18 legal system.

19 A. Right.

20 Q. I am asking you in reference to your
21 specific question about the appropriateness of
22 testimony in a court of law.

23 A. And as someone who understands ethics,
24 yes, I would agree that if you lay out the issues,
25 describe the issues, you could then be asked your own

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1 normative assessment of an issue or a topic or
2 whatever it would be, and certainly nothing would
3 preclude an ethicist from giving his or her opinion
4 about that.

5 Q. Okay. So to the extent that that last
6 sentence says it is not appropriate in a court of
7 law, you are only referring to the ultimate judgment?

8 A. Yes.

9 Q. Not whether or not that expert can offer
10 his or her opinion?

11 A. Right.

12 Q. Thank you. By the way, do you have any
13 training in law?

14 A. No.

15 Q. Or legal systems?

16 A. No.

17 Q. The history of law, or anything?

18 A. Certain areas of ancient medieval law,
19 certain areas have been because of their impact on
20 help and understanding ethics, yes.

21 Q. But you don't hold yourself out as expert
22 in legal systems?

23 A. Absolutely not. I leave that to others.

24 Q. In the next bullet you say: "A secular
25 society must be very cautious in resolving moral

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1 disputes between persons with incompatible views."

2 Is it your testimony that a secular
3 society should not resolve moral disputes or that
4 they should be cautious in doing so?

5 MR. CASSETTA: Objection; compound.

6 BY MR. MIGLIORI:

7 Q. I will rephrase that. Are you saying it
8 is not the business of secular society to resolve any
9 moral disputes?

10 A. No, because I do think, as I said before,

11 there is an area, though I think it is a very narrow
12 area of moral conduct that binds all of us together.

13 So clearly a secular society can, you
14 know, do things -- the business about promise
15 keeping, contracts is an example of that. What I was
16 getting more is more contentious areas, which is
17 often what, for example, bioethicists are involved
18 in. I would be very cautious to having a society
19 intervene in those areas.

20 Q. If a society like ours, which is based on
21 a democratic form of government, has laws which
22 govern conduct of society, of members of society, is
23 it necessarily true that violation of those laws
24 would be unethical? Is it inherently unethical to
25 break the law?

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1 A. No. I mean, in part because you couldn't
2 draw that conclusion in part because sometimes you
3 would have to look at more carefully of what the
4 example would be, what the law would be, because it
5 is perfectly -- it's conceivable that a law can be
6 passed, because the system is imperfect, where simply
7 what you have is the imposition of one moral point of
8 view by one group of people on others.

9 I think we are in an era of when that is
10 a temptation of a lot of different groups, which is
11 to make you immoral. So I don't think violation of
12 those kinds of things would necessarily be immoral or

13 unethical.

14 Q. As it relates to contracts, for example?

15 A. I think in a contract you have something
16 different. It is a very thin notion of morality.

17 But if assuming I am not coerced and you
18 are not coerced, and if we come to an agreement on
19 something where we mutually agree and other people
20 understand that we mutually agree, then I do have
21 some moral -- we create moral obligations in that
22 sense.

23 Q. And breaching that contract would result
24 in a violation of some moral law?

25 A. Yes.

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1 Q. How about as it relates to laws involving
2 fraud? If somebody violates a law involving fraud,
3 is that by its very nature an unethical act?

4 MR. CASSETTA: I object here, Counsel, to
5 the form of the question. I mean, the word "fraud"
6 can have different meanings in different contexts.
7 It can have a legal meaning. Perhaps you can clarify
8 what you mean.

9 BY MR. MIGLIORI:

10 Q. Do you understand the term "fraud"?

11 A. Let me say I understand it in the broad
12 sense of misrepresentation.

13 Q. Okay.

14 A. And I think a society like ours, I would
15 argue, would need certain laws and regulations in

16 this regard in the sense that part of interchange
17 between people with different assumptions, different
18 views of the world, things like that, would require
19 that we know sort of where one another was coming
20 from.

21 So, if you will, things like fraud are
22 part of the rules of the game. They are the way we
23 are able to interact with one another.

24 Q. Which is sort of utilitarian. In order
25 to operate as a society we need laws that establish

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1 the rules of the game?

2 A. Exactly.

3 Q. And to violate those rules of the game in
4 order to keep society moving and intact it would be
5 unethical, correct?

6 A. I would argue that it would be, right.

7 MR. CASSETTA: Again, I object to the
8 form of that question.

9 THE WITNESS: Again in the broad sense
10 getting down to particulars and issues.

11 BY MR. MIGLIORI:

12 Q. I'm not asking you to prove the elements
13 of fraud. I'm am asking you generally.

14 A. Yes.

15 Q. And you understood my question?

16 A. Yes.

17 Q. Okay. And that would apply to other

18 areas of law that you would put in this category of
19 rules of the game?

20 A. Uh-huh.

21 Q. Anything that relates to how we as a
22 society can operate without confusion or chaos?

23 A. Yes.

24 MR. CASSETTA: Counsel, I object to the
25 last question. I'm not sure exactly what the

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1 question was.

2 BY MR. MIGLIORI:

3 Q. Did you understand my question?

4 A. I understand it in this sense. I think
5 that one can argue for in a society like ours is what
6 I would call a procedural morality, and a quick
7 example would be things like when treating a patient
8 you have to provide informed consent. You have to
9 get consent from people to do things to them.
10 Therefore, you have to explain them. You have to
11 make sure they are not coerced.

12 So those kinds of procedural -- that's
13 the kind of normative ethics that I think one can in
14 fact talk about in a secular society.

15 Q. I'm sorry. And you included in that in
16 our earlier discussion the general concept of
17 misrepresentation as part of the rules of the game?

18 A. Sure.

19 Q. And as part of this idea of procedural
20 rules?

21 A. Yes.

22 VIDEOGRAPHER: This is the end of
23 videocassette number 1. We are off the record at
24 10:13.

25 (Recess.)

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1 VIDEOGRAPHER: We're back on the record
2 at 10:16. This is the beginning of videocassette
3 number 2.

4 BY MR. MIGLIORI:

5 Q. Father Wildes, do you have any training
6 in business, or business management or business
7 ethics, anything of that nature?

8 A. No, no formal training.

9 Q. Do you have -- and I am referring back
10 now to your March 1997 deposition testimony, where
11 you seemed to have expressed an opinion that there is
12 no corporate identity that can be ascertained. Is
13 that an accurate representation?

14 A. I would be more subtle. I think that
15 there can be corporate identity, but I think it is
16 very difficult to do.

17 This is an area of interest to me in part
18 because of thinking about Catholic health care and
19 what it is to have an institution with an identity.

20 On the one hand, this is perhaps as much
21 a hope as a position, I hope that you can talk about
22 corporate identity and corporate and we make efforts

23 in that area.

24 But I think it is very difficult to
25 figure out conceptually what that means and,

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1 therefore, going back to our last discussion, how one
2 proceeds in a society like ours in terms of being
3 accountable for that.

4 Q. So one may exist, but it is difficult to
5 get at, if I understand correctly?

6 A. Right.

7 Q. What in your mind would it require in
8 order to reach -- first of all, would a professional
9 ethicist be in a position to reach that subtlety?

10 MR. CASSETTA: Object as to form.
11 Counsel, what is he --

12 BY MR. MIGLIORI:

13 Q. If you understand?

14 A. To assess a corporate identity, I think
15 again you can ask -- I would hope that the
16 professional ethicist, if this has been an area that
17 they have been thinking about, could bring certain
18 questions to the table that might help everybody sort
19 of look at a set of issues.

20 But I do think we are as far as, and I
21 don't know the law in this area, but certainly
22 conceptually I think there is no real strong
23 resolution about whether or not the corporations can
24 have identities.

25 I have argued that a corporation can have

1 a mission, can have identity, things like that. And
2 I have had others respond to my arguments by saying I
3 have not proven the case and have to do more, and
4 things like that.

5 Q. Where have you argued that?

6 A. There was a piece I did -- I could look
7 it up for you in here in The Journal of Medicine and
8 Philosophy a number of years ago. Let me see if I
9 can find it here. It's here somewhere, I know it.
10 It's got to be earlier than that.

11 Oh, the second piece in the refereed
12 articles list on institutional integrity. What I was
13 working on there was looking at, particularly I was
14 thinking about institutions such as in health care or
15 in education that have particular visions of
16 themselves and with that particular missions, or they
17 think they do anyway. But that is not an
18 uncontroversial point of view.

19 Q. But you share or at least in that article
20 you explore the idea that corporations can in fact
21 have an identity?

22 A. Yes.

23 Q. Would you go as far as to say that there
24 could be a corporate conscience?

25 A. I would argue that in principle I think

1 that would be possible, yes. Where I need to do more
2 reflection and work is -- and it is actually an area
3 I would like to move into now that I am finishing the
4 book I have been working on -- is to say more
5 concretely what does that mean.

6 For example, if there is a corporate
7 conscious, who's got the responsibility for it, I
8 mean ultimately? Having served as a trustee and a
9 director, which I think legally would have the
10 ultimate responsibility, I would feel very uneasy to
11 say that day to day. So one of the areas -- this is
12 particularly germane as health care is being
13 radically reshaped in its delivery and payment
14 structures and all that -- I think these questions
15 about corporate mission, identity, delivery of
16 services, questions that often were seen as business
17 questions are much more germane to the clinic and the
18 practice of medicine.

19 So this is an area that I would want to
20 work on. But I think we are very ambiguous on it as
21 a society.

22 Q. Now you are endeavoring or you are
23 exploring the area of who ultimately would be
24 responsible for that conscience?

25 A. Right. And how would you think about it

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1 and what kind of structures would you need to have

2 it.

3 Q. And if you are going to be motivated by
4 your corporate conscience to make a change at this
5 point, you are of the opinion that that change would
6 be at the trustee level or at the higher-up level?

7 A. I mean that's a first take on my part. I
8 think it has to have obviously support at that
9 level. Otherwise, the change is not going to take
10 place, I don't think.

11 But I don't know that that is sufficient,
12 because as we all know in lots of organizations the
13 upper echelon can mandate something and it sort of
14 goes nowhere.

15 I think you have to get down, you have
16 the start asking questions not only about what is the
17 role of the trustee but what are the other things
18 within the institution or the organization that need
19 to be in place. Who's taking day-to-day
20 responsibility for this?

21 Q. So to fix or to change a corporate
22 conscience you would have to necessarily do it from
23 top down or from bottom up, but it would have to be
24 throughout the entire system?

25 A. Right. Yes, yes.

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1 Q. Which would necessarily involve the
2 people making the ultimate decision so it's the top
3 corporate leaders?

4 A. Absolutely. I would think, particularly
5 for any major changes, yes.

6 Q. On page 3 of the list of opinions, which
7 is technically page 4 of the Exhibit 2, in the first
8 full bullet you refer to something for the first time
9 but subsequently you refer to them many times, you
10 talk about retrospective moral judgments --

11 A. Uh-huh.

12 Q. -- that plaintiffs level against the
13 tobacco industry?

14 A. Uh-huh.

15 Q. And that is the last sentence of the
16 first full bullet?

17 A. Right.

18 Q. And you call them inherently invalid
19 retrospective moral judgments that the plaintiffs
20 have leveled against the tobacco industry. First of
21 all, which judgments are you referring to?

22 A. I think a lot of the judgments or the
23 rhetoric of judgments. Let me put it this way. It
24 would probably be better phrased than the rhetoric of
25 judgments that gets used, about either misconduct or

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1 deception, or things like that.

2 My concern, and this would be true with
3 any mortal, is its -- we talked earlier about two
4 experts who can look at the same issue and make
5 different and differing judgments.

6 You can go even a step further beyond

7 after the fact look back and make a retrospective
8 judgment and say they should have done or somebody
9 should have done X. But I think that is a very
10 different judgment than the prospective judgment.

11 And they may be helpful insofar as we
12 learn about the future, but I am not so sure they are
13 helpful about understanding the past.

14 Q. There are a couple questions I have. But
15 to isolate, first, you seem to be referring to
16 particular moral judgments in this opinion --

17 A. Uh-huh.

18 Q. -- without specifically naming them. I'm
19 wondering which moral judgments are you referring to?

20 A. I was thinking of some of Dr. -- and I
21 have no specific cite on this but I was presented
22 with Dr. Murray's judgments about this was wrong or
23 certain things were wrong, which I take to be ethical
24 judgments, moral judgments.

25 I think one goes back to my earlier thing

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1 about the ethics expert, and the other is it's making
2 a judgment after the fact is a very different thing
3 than making a judgment before you make a decision or
4 as you are making a decision.

5 Q. Let's break that down to two parts.

6 A. Okay.

7 Q. When you say that it is inherently
8 invalid, for example, Dr. Murray's opinions that some

9 act or conduct of the tobacco industry was wrong,
10 when you say that that is inherently invalid you are
11 saying it is inherently invalid as an ultimate
12 conclusion?

13 A. Yes.

14 Q. It is not inherently invalid as an
15 ethicist who has an opinion about that conduct?

16 A. Right.

17 Q. So certainly he can have his opinion
18 about the normative ethics of tobacco industry's
19 conduct in any given area, correct?

20 A. That's correct.

21 Q. So it is not invalid for him to have the
22 opinion, only to espouse that that's the only
23 opinion?

24 A. Right.

25 Q. Okay. And as for the retrospective

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1 nature of it, are all retrospective judgments, moral
2 judgments, inherently invalid? Can you have a
3 retrospective judgment -- let me strike that
4 because --

5 A. Okay.

6 Q. -- I think we've already established
7 inherently invalid just means it can't be the
8 ultimate judgment, right?

9 A. Right.

10 Q. Are all retrospective moral judgments
11 problematic?

12 A. It would depend in part of what you
13 wanted to do with them. Of course, I'm a great
14 believer that there is always a value, a positive
15 value for retrospective judgments insofar as we look
16 to the past and we try to learn from what we did and
17 assess what we did. I think that is part of
18 individually and it's collectively.

19 There would be some areas, again going
20 back to where I think that in a secular society where
21 that you could look to the past and make a good moral
22 judgment about it.

23 If, for example, if a patient consents or
24 thinks they consent to one thing and in fact they
25 were consenting to something else and they were

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1 deceived, this goes back to the procedural
2 questions. If there were procedural violations, if
3 people were in that sense misused or abused, I think
4 you can make assessment of that, yes.

5 Q. Again, you include in that procedural
6 fraud, for example, or misrepresentation?

7 A. Right.

8 Q. Now, the moral judgments that are made
9 contemporaneously or prospectively --

10 A. Uh-huh.

11 Q. -- do you believe that those are -- they
12 start from sounder footing, that they are necessarily
13 better at their base?

14 A. No. No. I mean, I think they are what
15 they are. They are in that particular place in
16 time.

17 In fact, I think after the fact we may
18 find other things that because of a lack of knowledge
19 or any number of things that we didn't have at hand
20 at the time, that when you look back you may say if I
21 was doing that again today, if I knew then what I
22 know now, I would do things differently.

23 Q. So to put this into context, for example,
24 Dr. Murray's testimony as to the ethical dilemmas,
25 the non-normative ethics of tobacco industry conduct,

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1 isn't invalid by the mere fact that it is
2 retrospective?

3 A. Right.

4 Q. Okay. And Dr. Murray's normative ethical
5 opinion about that same tobacco industry conduct
6 after having laid out the ethical dilemma is not
7 inherently invalid because it is retrospective?

8 MR. CASSETTA: Object as to the form of
9 the question.

10 BY MR. MIGLIORI:

11 Q. His non-normative opinion --

12 A. Right.

13 Q. -- we've said was not inherently invalid
14 because it's retrospectively applied. Would
15 Dr. Murray's normative opinion be inherently invalid
16 because it is retrospective?

17 A. No, because it is like I said no better,
18 no worse than anyone else's.

19 Q. But he has just like you and I every
20 business having that business?

21 A. Sure.

22 Q. And expressing that opinion?

23 A. Sure.

24 Q. Is it entirely accurate to say that
25 Dr. Murray's opinions in either the normative or

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1 non-normative context are not at all derived from
2 expertise?

3 A. Again, expertise, going back to the
4 distinction made earlier, in his whatever his
5 academic training is, things like that, what I was, I
6 think, most concerned with was this notion of an
7 ethics expert possessing some special expertise
8 vis-a-vis normative judgments that you wouldn't have
9 or a juror wouldn't have or somebody else wouldn't
10 have.

11 Q. But certainly his normative ethical
12 opinion, his normative judgment would be derived at
13 least in part by his expertise to the extent that he
14 has an expertise at identifying the normative
15 dilemma, of the non-normative dilemma?

16 MR. CASSETTA: Object to the form of the
17 question.

18 BY MR. MIGLIORI:

19 Q. Let me refocus you on this page 3 again
20 in the third full bullet.
21 A. Uh-huh.
22 Q. You say that "At best, the opinions of
23 these experts" -- referring to people I assume like
24 Dr. Murray -- "reflect personal opinions not derived
25 from any 'expertise.'?"

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1 A. Yes.
2 Q. And you put in quotes "expertise."
3 A. Yes.
4 Q. They are in part derived from his
5 expertise because he identified the non-normative
6 question, dilemma; correct?
7 A. Sure. I mean the expertise is the
8 descriptive, the mapping the non-normative elements
9 that I mentioned that we talked about earlier.
10 Q. Forming the question?
11 A. Sure.
12 Q. So when he forms a question and then goes
13 on to ultimately answer the question about, for
14 example, the conduct of the tobacco industry, it is
15 in part derived from his expertise at identifying the
16 ethical question, correct?
17 A. Perhaps in identifying, because I am not
18 sure that -- I mean not just on him -- on anyone that
19 the ethic, that if one has an expertise in that area
20 that that makes you any better equipped -- in fact I
21 don't think it does -- to answer the question. And

22 frankly, I mean you have to get down sort of case by
23 case, person by person.

24 It strikes me that in one sense when it
25 comes to a lot of -- often times when it comes to

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1 moral dilemmas, ethical dilemmas that ethicists,
2 people who are trained in ethics, aren't any better
3 or worse and can suffer from all the foibles and
4 problems of any other human being.

5 So I am not sure that the expertise in
6 being able to create these maps necessarily leads to
7 how much it actually contributes to the sort of the
8 normative level of, yes, you should do this; no, you
9 shouldn't do that.

10 Q. Would you agree, though, that for
11 anybody's -- I am not limiting this to any expert --
12 anybody's normative ethical opinion is only as good
13 as the amount of information that it is based upon;
14 it's only as good as the accuracy of the question
15 that is posed in the first place?

16 MR. CASSETTA: Object as to the form of
17 the question.

18 THE WITNESS: No. I wouldn't sign off on
19 that wholesale in a sense that I think a lot of times
20 people can ask extraordinarily good moral questions
21 who do not have any expertise in the area and
22 sometimes they ask moral questions better than those
23 of us who are trained in the area.

24 BY MR. MIGLIORI:

25 Q. Those are particularly intuitive people,

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1 though. I think as a general for a physician to make
2 a good diagnosis the physician's information or
3 diagnosis is only as good as the information he is
4 provided.

5 A. Sure.

6 Q. Is that right fair?

7 A. That's fair.

8 Q. And the same would be true for an
9 ethicist. An ethicist's normative opinion would only
10 be as good as all of the material that is inputted
11 into the ethical question?

12 A. Sure.

13 Q. Okay. So to that extent any normative
14 opinion of a professional ethicist would necessarily
15 be only as good as the information that went into the
16 ethical question?

17 A. Yes. The conceptual problem you get into
18 then is how one frames the question and what then
19 counts as appropriate or inappropriate input into the
20 question.

21 Q. So at least in theory the professional
22 ethicist would be a lot more sensitive to these
23 problems that you are raising?

24 A. One would hope, yes.

25 Q. So to that extent there is expertise in

1 resolving all of these factors in order to form a
2 solid helpful ethical question?

3 MR. CASSETTA: Object as to the form of
4 that question.

5 THE WITNESS: To use my earlier analogy
6 insofar as you can create -- I think the questions
7 get easier the better you can create a map for the
8 questions. And I think that's where it's easier.

9 But to muddy the water further, we all
10 know that even in creating maps you do so with
11 certain biases. You know, you make certain
12 assumptions about the world.

13 You know the fabled New Yorker cover of
14 the New Yorker's view of the world that's a map of
15 the world. It may not be my map of the world. That
16 also plays into it. And I think you should not
17 undercut that.

18 BY MR. MIGLIORI:

19 Q. But the map makers of the ethical world
20 are professional ethicists?

21 A. Yes.

22 Q. Do you have a particularly -- strike
23 that. In that you are both an ethicist and a member
24 of the cloth, if you will --

25 A. Right.

1 Q. -- do you have a particularly stronger
2 hold on the world of ethics than someone who is just
3 a professional ethicist?

4 A. I don't think so.

5 Q. So when you say that in pluralistic
6 society the only people that can give ultimate
7 conclusions about normative ethics are clergy and
8 only to the extent that they do it with their own
9 congregation of followers, you are talking in that
10 context about the final answer?

11 A. But I am also talking about within a
12 particular group or community. The way I see secular
13 society is, particularly a society like ours is there
14 are many moral communities encompassed within our
15 larger society.

16 And so what I think what you want to call
17 a final answer I think works within a particular
18 community. It may not be the answer that another
19 community would see as ultimate or final.

20 Q. Okay.

21 A. And I do use religious communities as
22 examples because I think they are something that are
23 concrete and people understand. But they don't have
24 to just be religious community. It can be a
25 community of, you know, of convinced

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1 environmentalists, or whatever.

2 Q. Okay. How about communities of

3 scientists?

4 A. I think there are moral dimensions to
5 science. Obviously, in a broad sense you are talking
6 about pursuing truth, doing good for humanity, things
7 like that.

8 I think it is a much more fragile
9 community, if I can draw a contrast, than, for
10 example, orthodox Jews or Roman Catholics where we
11 are not just bound together for a particular project,
12 but we are bound together as part of a way of life.

13 Q. So it might rise to the level of
14 religion --

15 A. No.

16 Q. -- or the professionals?

17 A. Okay.

18 Q. But within professional communities there
19 is room for normative decisions or opinions about the
20 ethics of some conduct?

21 A. There can be, yes, and, in fact, I think
22 if you look, again you see both the possibility and
23 the difficulties of that if you, for example, if you
24 look at physicians 35 years ago, 40 years ago. There
25 was a fairly comprehensive professional ethic that we

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1 looked to all physicals to uphold. That ethic has
2 gotten much more fragmented over time and I think is
3 continuing to become fragmented as physicians have
4 come from different points of view on different

5 issues.

6 Q. One of the rules of ethics for the
7 American Medical Association, for example, was you
8 couldn't charge any other physician's family?

9 A. Right.

10 Q. And that became a debated issue.

11 A. Right.

12 Q. That is what you are referring to?

13 A. Or also even more substantive issues
14 like, what I would take more substantive, you know.
15 You don't do abortions.

16 Q. Okay.

17 A. You do now. There's deep tension, and if
18 the data, the polling data is in anyway accurate,
19 there's deep tension about whether or not physicians
20 ought to assist in suicide.

21 I think there can be certainly a
22 professional ethic, but I think we have to work much
23 harder at in a society like ours than we used to in
24 part because of sort of the underlying moral
25 consensus is much more fragmented than it once was.

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1 Q. Okay. So you do acknowledge, then, that
2 within societies of scientists or doctors that there
3 are rules of conduct?

4 A. Yes.

5 Q. And violation of those rules of conduct
6 or codes of ethics within that community are
7 normatively unethical?

8 A. Sure, in principle, yes. And part of my
9 argument is I think it is more and more difficult for
10 us to establish what those codes are.

11 Q. But where there are written codes, where
12 they do exist, it is less difficult to identify;
13 correct?

14 A. Right.

15 Q. Are you familiar with codes of conduct in
16 the areas of hard sciences?

17 A. Other than to know there are codes that
18 are out there. I mean, it is not something that I --
19 I focus mostly on physician stuff and nursing.

20 Q. Do you know whether or not the NIH, the
21 National Institute of Health, has a code of ethics
22 for science research?

23 A. Part of that -- their code, if you will,
24 was where you talked about earlier understanding what
25 constitutes scientific misconduct, things like that.

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1 I know that, as you said earlier, that has been under
2 pressure and discussion.

3 Q. Okay. But do you know whether an actual
4 written code exists for the NIH?

5 A. I don't know if it's actually codified,
6 other than the particulars, no. I don't know if it
7 is like the old Hippocratic code or something of that
8 kind.

9 Q. So when you refer to that in your

10 disclosure, when you refer to the traditional notions
11 of scientific conduct, that's based on sort of your
12 general understanding, not based on a reading of a
13 particular canon of ethics in science?

14 A. Right.

15 Q. Okay. Do you know whether the American
16 Society of Epidemiology has a code of ethics?

17 A. I don't know. I wouldn't be surprised if
18 they did.

19 Q. Have you ever heard of the Institute for
20 Scientific Integrity?

21 A. Yes.

22 Q. What do you know about that?

23 A. I just merely know the title.

24 Q. Is there within that a code of ethics for
25 scientific research?

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1 A. I am sure there is. I would be sure in
2 the sense I would expect that there is.

3 Q. But you are familiar with it to the
4 extent you have read it or studied it?

5 A. No.

6 Q. Okay. Have you read or studied any code
7 of ethics with regard to -- and I am talking about
8 written codified code of ethics -- with regard to the
9 hard sciences?

10 A. No.

11 Q. Have you ever conducted any scientific
12 research yourself or participated in any scientific

13 research yourself?

14 A. No.

15 Q. What is your understanding of peer
16 review?

17 A. Wait just a second. The only thing I
18 have served on institutional review boards at
19 Georgetown which review and approve research with
20 human subjects. That I know.

21 Q. And you serve on those boards as an
22 ethicist?

23 A. Yes.

24 Q. Whether or not it is ethical to even
25 undertake these projects?

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1 A. Right.

2 Q. Do you wear your ethicist hat and your
3 Catholic priest hat?

4 A. I actually wear both at Georgetown. One
5 is I am largely looking at things of ethics. Also
6 there are certain types of research or protocols
7 within research that we can't be involved in because
8 of the Catholic nature of the institution. So I also
9 wear that hat as well.

10 Q. Do those hats clash ever?

11 A. They clash only in the sense that there
12 is sometimes when there is research that as an
13 ethicist I would say is fine, this is fine; go ahead
14 and do it, but we can't do it here.

15 Q. For example, assisted suicide, your
16 opinion on that as a professional ethicist is what?

17 A. My view is that in a secular society like
18 ours that there ought to be room for individuals to
19 make decisions about how they end their lives, even
20 though as a Roman Catholic I think it is
21 inappropriate or it's morally wrong to end your life
22 that way.

23 Q. So as a Catholic there is no question the
24 normative ethics of that question is you don't do it?

25 A. Right.

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1 Q. But as an ethicist you see that there is
2 this question posed out there?

3 A. Sure.

4 Q. Does your personal normative opinion
5 about that particular topic differ from the church's
6 position?

7 A. About assisted suicide? Well, no, in the
8 sense that I uphold the church's teaching on it.
9 Where there would be difference clearly I think
10 certainly the hierarchy of the church would want to
11 see this enshrined in law or they do want to see it
12 enshrined in law.

13 Q. As you said before, that's where you part
14 with the church in the sense that you don't feel it's
15 necessarily the business of law in a pluralistic
16 society to enforce those laws?

17 A. Right.

18 Q. And is that true for abortion?
19 A. Yes.
20 Q. So you don't feel there should be any
21 laws governing abortion --
22 A. Right.
23 Q. -- as a professional ethicist?
24 A. Right.
25 Q. As a Roman Catholic priest what is your

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1 feeling on that?
2 A. I think that in general abortion is
3 wrong, and I think -- obviously I am not going to
4 counsel people to abortion. I mean, most often you
5 meet people in very tragic circumstances and you have
6 to help them deal with the circumstances they are in
7 a certain point.
8 I also think that part of this is my own
9 reflection both as an ethicist and priest that the
10 challenge for the church, which I don't think we have
11 taken up well at all is actually to think how if you
12 believe that these things are true, if you believe
13 that abortion is wrong, if you think that assisted
14 suicide is wrong, and you also believe there are
15 positive elements that ought to be in it, how do you
16 best witness to those things.
17 And I think that is the challenge for us
18 that we need to stop looking for society to enshrine
19 them in law and look for other ways to give witness

20 to what it is we believe in.

21 Q. If a Catholic approached you for counsel
22 as a Catholic priest, you would have to counsel them
23 against abortion?

24 A. I would, yes. I mean, I would always
25 counsel them in the end that they have to make a

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1 decision in their own conscience. I would be very
2 clear with them about what the church's tradition and
3 teachings are on the issues.

4 And I would try to help them understand
5 themselves and their situation in light of that. But
6 I would never -- I steadfastly refuse to say you
7 ought to do X, because the church, even though it
8 doesn't always herald this, has always held the
9 position on the importance of the protection of
10 conscience and people have to make decisions that
11 they can live within their own conscience.

12 Q. And that outweighs, if you will, the
13 church's formal opinion about abortion?

14 A. I would argue -- I mean in a larger and
15 different area, I would argue that it does, yes.

16 Q. So the church's doctrine, if you will, to
17 appeal to your conscience weighs heavier than the
18 position of the Pope on whether or not abortion
19 should be legal?

20 A. Right.

21 Q. And that is your argument?

22 A. Yes.

23 Q. Is that widely accepted throughout the
24 church?

25 A. No. I wouldn't say it's widely

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1 accepted. It is accepted by many, and I think in
2 practice it is accepted by many, but as anybody who
3 follows the newspapers we're in a time of deep
4 tension on what counts and what doesn't count.

5 Q. So if we were to go through all sorts of
6 controversial moral laws about statutory rape, we
7 would go through laws about crimes against nature,
8 and you refer to sexual crimes?

9 A. Right.

10 Q. -- or sexual conduct, you would share the
11 same thing?

12 A. Right.

13 Q. It is the appeal to your conscience?

14 A. Rape I would not.

15 Q. When I say rape, I did say statutory.

16 A. Oh, I'm sorry.

17 Q. I meant the age of consent as opposed to
18 forceful rape.

19 A. Right. Assuming that the person could,
20 and this gets to a much murkier area, as long as
21 somebody can give free consent, that becomes key for
22 me.

23 Q. And the idea of consent is another
24 ethical problem for ethicists?

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1 Q. And I think you referred to Thomas at one
2 point where he said at the age of seven you can
3 consent?

4 A. Right.

5 Q. Do you share that view?

6 A. No.

7 Q. For you there is some age at which or
8 some point in every individual's life where they are
9 able to understand and comprehend and, therefore,
10 consent, and that is not something that should be
11 dictated by law?

12 A. Right.

13 Q. Okay.

14 A. Although I do recognize that we need to
15 make social judgments. This goes back to the
16 procedural about, you know, we need to pick out an
17 age at which somebody can consent because otherwise
18 we won't be able to function very well as a society.

19 Q. Or when somebody can drive a car?

20 A. Right, exactly, exactly.

21 Q. Those are the rules of the game?

22 A. Right.

23 Q. So there is some business of venturing
24 into the rules of game when talking about the courts
25 and the laws?

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1 A. Right.

2 Q. Okay. What is your understanding of the
3 peer review process?

4 A. In general, I mean both I think in all
5 areas of academic life part of the -- the peer review
6 process is in part of the way to judge the quality of
7 any academic work, whether it's scientific or in the
8 humanities or wherever it is. And I think it is
9 crucial to sort of advancing knowledge in any area,
10 particularly in science.

11 Q. So, first of all, have you participated
12 in any peer review process in the hard sciences with
13 the exclusion of your role as an ethicist with
14 Georgetown?

15 A. No.

16 MR. CASSETTA: I object to the form of
17 the question, Counsel.

18 MR. MIGLIORI: Okay.

19 MR. CASSETTA: You are asking has he
20 participated in what specifically?

21 BY MR. MIGLIORI:

22 Q. My question, Father, is have you
23 participated in the peer review process with respect
24 to any of the hard sciences, research in any of the
25 hard sciences?

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1 A. No.

2 Q. Okay. Although you did and you do
3 participate at Georgetown in that process to the
4 extent that there might be ethical questions about
5 even conducting certain research?

6 A. Yes.

7 Q. And that would be hard science research?

8 A. Yes.

9 Q. So when you refer in your disclosure to
10 the peer review process of hard sciences, you are
11 equating it to the process with which you are
12 involved which is academic peer review?

13 A. Yes.

14 Q. So the testimony that you intend to offer
15 in this case as to the peer review process in the
16 hard sciences is not from direct knowledge of the
17 peer review process in the hard sciences?

18 MR. CASSETTA: I object as to the form of
19 that question.

20 THE WITNESS: No. But I just don't know
21 that it is that different. If people develop in
22 presentable form articles, obviously you submit
23 them. They are reviewed by a jury of peers. If
24 acceptable they are published.

25 And then that opens up a wider audience

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1 to judge the merits of the work. I mean, I think the
2 dynamic is the same.

3 BY MR. MIGLIORI:

4 Q. Okay. I want to make sure I understand.
5 When you talk about your testimony as an expert on
6 the peer review process, you are not holding yourself
7 out as an expert in the peer review process of
8 scientific research; correct?

9 A. That's correct.

10 Q. You are holding yourself out as an expert
11 in the peer review process of an academic?

12 A. Yes, which I think are essentially the
13 same.

14 Q. Okay. But you have never participated --

15 A. Right.

16 Q. -- in the scientific --

17 A. Right.

18 Q. -- research peer review process?

19 A. Right.

20 MR. MIGLIORI: Okay.

21 MR. CASSETTA: I object as to the form.
22 Your question is he has never, and I think has been
23 asked and answered. He has participated in the
24 review process.

25 MR. MIGLIORI: Yes. Right.

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1 BY MR. MIGLIORI:

2 Q. In the academic context?

3 A. Right.

4 Q. Not in the scientific context?

5 A. Right. I don't review articles for

6 scientific journals generally unless they should have
7 happen to touch on some area of bioethics or
8 something like that.

9 Q. So necessarily, other than your
10 assumption that they are one and the same, the two
11 processes and peer review process with scientific
12 research and in academics generally, aside from your
13 assumption that they are the same, you have no other
14 experience that would tell you that they are in fact
15 the same process?

16 A. Right.

17 MR. MIGLIORI: Okay.

18 MR. CASSETTA: I object as to the form of
19 that last question.

20 BY MR. MIGLIORI:

21 Q. You refer to on page 6 of your list of
22 opinions "robust debate by all interested
23 participants in the scientific research."

24 A. Uh-huh.

25 Q. When you do that, what do you mean that

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1 science benefits from the robust debate? How does it
2 benefit?

3 A. I think the more -- and I think this is
4 true not only of science; I think this is true of,
5 you know, if you will, of the pursuit of knowledge
6 generally that ideas or positions only become
7 stronger the more they are subjected to defense,
8 discussion, review, criticism.

9 I think most positions and understandings
10 only get better with time in a certain sense, yes,
11 and if it is weaker it will be criticized and you can
12 amend it, you can develop it. You may have to throw
13 it out after a while.

14 Q. So it is necessarily beneficial to --
15 strike that. The more debate then the more
16 discourse, ultimately the more science benefits?

17 A. I think so, yes.

18 Q. Then necessarily refers back to your
19 comment about the adversarial process?

20 A. Uh-huh.

21 Q. And not necessarily adversarial in that
22 they are looking for two different outcomes, just the
23 idea that there are competing interests in the
24 research; correct?

25 A. Yes.

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1 Q. And that necessarily requires dialog?

2 A. Yes.

3 Q. And it necessarily requires candid
4 dialog?

5 A. Yes.

6 Q. So the more candid, the more extensive
7 the dialog, the more science benefits?

8 A. I believe so.

9 Q. So the converse would be true, too: The
10 less candid the less science benefits?

11 A. Right.

12 Q. And, of course, the peer review process

13 in the scientific context helps to achieve that end;

14 correct?

15 A. Sure.

16 Q. So as you reviewed Dr. Richmond's

17 testimony about the peer review process in arriving

18 at a consensus in that situation about tobacco and

19 health that peer review process, that debate, is what

20 benefits science?

21 A. I believe so, yeah, I think open public

22 debate. I think what that also implies as we see

23 this a lot in medicine as well is that sometimes sort

24 of the -- it also allows room for the quirky

25 position, so to speak, because sometimes the quirky

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1 position in fact the more it probes the closer to the

2 truth it actually gets.

3 Q. So that is all part of the discourse?

4 A. Exactly.

5 Q. So in order to even hear the quirk or to

6 benefit from the quirky input you have to know about

7 it?

8 A. Uh-huh.

9 Q. It has to be forwarded?

10 A. Uh-huh.

11 Q. And I apologize. But you have to

12 articulate yes or no.

13 A. Yes. I'm sorry.

14 Q. So candor and dialog are essential
15 elements of what you call the robust debate?

16 A. Yes.

17 Q. And if there is a lack of candor and a
18 lack of dialog that will slow down the process of
19 science?

20 MR. CASSETTA: Object as to the form of
21 that question.

22 THE WITNESS: It certainly could, sure.

23 BY MR. MIGLIORI:

24 Q. Okay. Again, you have not reviewed any
25 of the internal CTR documents?

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1 MR. CASSETTA: Object. That has been
2 asked and answered, Counsel.

3 THE WITNESS: No.

4 BY MR. MIGLIORI:

5 Q. Okay. In the last bullet on page 6 you
6 refer to "These researchers having published tens of
7 thousands of scientific articles in peer review
8 publications concerning their research." And I am
9 assuming you are talking about the researches funded
10 by the CTR?

11 A. Yes.

12 Q. You have not read any of those scientific
13 articles, have you?

14 A. No. I looked at the CTR annual reports
15 and things like that which listed articles,

16 publications, things like that.

17 Q. And of those tens of thousands you never
18 looked at any individual research to see whether it
19 even related to tobacco and health necessarily?

20 A. Right, that's correct.

21 Q. The list that you looked at were just
22 research projects that were funded by CTR?

23 A. Yes.

24 Q. And you did not look at any single one of
25 those articles to verify whether in fact they were

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1 the product of the peer review process?

2 A. No. I mean, I made the judgment based on
3 the types of journals that things were published in,
4 things that are known to be functional in peer review
5 process.

6 Q. Can you tell me and as you sit here today
7 whether or not each and everyone of the tens of
8 thousands of scientific articles funded by CTR were
9 subject to the peer review process?

10 MR. CASSETTA: Object as to the form of
11 that question.

12 THE WITNESS: No.

13 BY MR. MIGLIORI:

14 Q. And that's because you haven't reviewed
15 them, correct?

16 A. Correct.

17 MR. CASSETTA: Object as to the form.

18 That calls for speculation that even if he read them

19 he would be able to tell whether it would be subject
20 to the peer review process.

21 BY MR. MIGLIORI:

22 Q. If you read a scientific study, if you
23 read a findings of scientific research, would you not
24 be able to tell whether it was subject to peer review
25 process?

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1 A. That is an interesting question. Let me
2 put it this way, and this is where the integrity of
3 journals becomes important which are some of the
4 questions we talked about earlier: The reader of
5 most journals, scientific and otherwise, assumes peer
6 review at work, and you assume that unless somehow it
7 is noted.

8 But you wouldn't be able to tell strictly
9 from the article itself that it had been peer
10 reviewed. There is nothing -- at least I am assuming
11 that unless an article is flagged to say this was an
12 invited article; we did not have anybody review it,
13 which is something that I can't remember ever seeing
14 actually, but that is a working assumption. So there
15 is nothing per se in the article inside that would be
16 that way.

17 Q. So, your sentence in the last bullet on
18 page 6 that reads -- this is second sentence of that
19 paragraph -- "These researchers have published tens
20 of thousands of scientific articles and peer review

21 publications concerning their research," it is not
22 clear to you whether in fact all of those articles
23 were in peer review publications?

24 A. No. What is, let me just from going
25 through the list, the articles by and large, I mean

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1 there may be an exception -- I hold that out; I am
2 not a perfect human being, where in peer review
3 publications, and I'm assuming that this is the way
4 these journals operate, that the normal standard of
5 peer review were followed.

6 Q. Are you aware of any scientific research
7 furnished by the CTR that was not published at all?

8 A. At all? No. I mean specifically, no.

9 Q. Do you have any knowledge about what has
10 been referred to as special projects?

11 A. I have some general knowledge based on
12 some of the things that I looked at here about
13 special projects.

14 Q. And that knowledge has come from
15 documents that were provided to you by the attorneys
16 for the tobacco industry?

17 A. Yes.

18 Q. You had no knowledge of that prior to you
19 being retained for the tobacco litigation?

20 A. That's correct.

21 Q. On page 7 you refer to CTR's primary
22 mission as being to fund research concerning the
23 diseases that have been associated with tobacco?

24 A. Yes.

25 Q. Where did you get that information?

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1 A. I drew that conclusion out of their own
2 self-description in their annual reports.

3 Q. That is somewhere written in their annual
4 reports that their primary mission is to fund
5 research concerning the diseases associated with
6 tobacco?

7 A. I believe so. That's my summary of their
8 self-statements.

9 Q. When you say self-statements, you are
10 talking about CTR's annual reports?

11 A. Annual reports, yes.

12 Q. When you say in the next sentence "That
13 mission has obviously been followed," what do you
14 base that on?

15 A. Based on again the annual reports of the
16 kinds of studies that have been done, things like
17 that.

18 MR. CASSETTA: Again, I am going to
19 object, Counsel. We have provided you a list of the
20 materials that Father Wildes has relied upon and it
21 may be helpful for Father Wildes to look at this,
22 because there are a number of things upon which he
23 bases his opinion, including the opinion that he is
24 taking about here.

25 MR. MIGLIORI: I would like to object to

1 you coaching the witness. He said that he based it
2 on the self-statements of CTR, and your directing him
3 to a list of documents that attorneys have proposed
4 for him I find objectionable. I do find that to be
5 approaching an area of instructing or coaching the
6 witness.

7 BY MR. MIGLIORI:

8 Q. My question to you, Father, is that the
9 mission having obviously been followed is based upon
10 the statements of CTR?

11 A. (No verbal response.)

12 Q. Yes?

13 A. Yes.

14 Q. And when you caution throughout your
15 disclosure "That motives and intentions of the
16 tobacco defendants must be carefully deciphered,"
17 that is a caution; that's not a statement that they
18 cannot be done; correct?

19 A. That's true. And that goes back to our
20 earlier discussion about the difficulties. I put the
21 analogy this way: It is hard enough, as we know, to
22 know both motives and intentions of individuals at
23 times let alone organizations and particularly
24 organizations that are complex and overlapping.

25 Q. So proceed with caution?

1 A. Right.

2 Q. But don't stop from proceeding?

3 A. Right.

4 Q. Okay. You state in the first paragraph
5 at page 8 that "there is nothing inappropriate with
6 lawyer involvement in CTR."

7 A. Right.

8 Q. Is that opinion there a normative
9 conclusion? Is that your opinion?

10 A. Yes, it is my opinion.

11 Q. And that is after you posed the ethical
12 parameters of the ethical question?

13 A. Right.

14 Q. And now it is your opinion that there is
15 nothing inappropriate with lawyers involvement in
16 CTR?

17 A. I say there is nothing necessarily
18 inappropriate. In arriving at that I think, for
19 example, universities, hospitals, all kinds of
20 institutions that involve lawyers as part of the
21 processes about their undertakings.

22 In a society that is largely procedural
23 lawyers play an extraordinarily important role. It
24 is not surprising, for example, that the area of
25 bioethics has become very much dominated by a lot of

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1 stuff in law.

2 Q. Those questions asked are things like
3 whether it is not only unethical but illegal to
4 assist in a suicide in a particular state; correct?

5 A. Right. What are, for example, legal
6 obligations in regard to this undertaking.

7 So just saying that because lawyers are
8 involved that somehow it's necessarily wrong, I don't
9 think is clear to me. I don't think it is
10 necessarily wrong that there were lawyers involved.
11 That doesn't mean they couldn't have been wrong or
12 inappropriate.

13 Q. So lawyer involvement could be
14 inappropriate; it is just not necessarily
15 inappropriate?

16 A. Right.

17 Q. That would depend on the facts and
18 circumstances?

19 A. Yes.

20 Q. And you are on this committee at
21 Georgetown where you give opinions about the
22 ethicality or the efficacy of funding certain
23 research at Georgetown, correct?

24 A. Uh-huh.

25 Q. Yes?

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1 A. Yes.

2 Q. Is there an attorney on that committee?

3 A. Yes.

4 Q. Does that attorney involve himself or

5 herself with the questions of whether the research
6 should be undertaken?

7 A. Well, at times, yes, in a sense that
8 maybe not -- let me in this sense that and it is a
9 question of whether the research should be undertaken
10 by this institution because of either existing
11 commitments or other things regarding the
12 institution, not so much about the broader, you know,
13 is this something that the world ought to know
14 question.

15 Q. Okay. So it is much more about legal
16 compliance, if you will, about the university's other
17 commitments --

18 A. Uh-huh.

19 Q. -- as opposed to the value of the
20 particular research projects?

21 A. Research itself, yes.

22 Q. That is correct?

23 A. Generally, yes.

24 Q. Are you of the opinion that it is a
25 lawyer's position on this committee, that it is this

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1 lawyer's position or domain, if you will, to offer
2 opinions about whether that is a valuable research
3 project?

4 MR. CASSETTA: Object as to form.

5 Counsel, we are again talking about a committee at
6 Georgetown University; is that correct?

7 MR. MIGLIORI: That is right, and he is a
8 member of that committee.

9 THE WITNESS: I am trying to think
10 concretely about things. Maybe this is my dilemma in
11 answering the question that you posed, because almost
12 always the issues are fairly project specific.

13 So the questions that get raised are not
14 so much should this research be undertaken. Frankly,
15 in some cases I remember I think certain lawyers
16 think why are we undertaking this project, don't we
17 know this already? And that is a question.

18 Now partly that is a question of at least
19 a couple dimensions, part of which is a scientific-
20 medical question she is asking and part of it is the
21 legal procedural question that if we know this
22 already why are we potentially subjecting people to
23 large things like that. So it mixes together in I
24 think when you get to the practical order of things.

25 BY MR. MIGLIORI:

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1 Q. But certainly that attorney's role in
2 that committee is not primarily to give input on the
3 value of particular research?

4 A. No. I mean, if you look at this, and
5 this is probably where you look, I mean the proposals
6 are evaluated in a number of perspectives as they
7 come to the full committee.

8 One of the areas is the scientific
9 efficacy. Is this a study that should be undertaken

10 and then is this model, is this a good sound study?

11 Then are there other evaluations going on
12 about things of the university, our legal objection
13 things. All of that forms the final elements of the
14 final decision that, yes, we should go ahead with
15 this and we are going to approve it.

16 Q. So this sort of forms the ethical
17 question you just discussed that they turn to you for
18 input?

19 A. Uh-huh.

20 Q. Yes?

21 A. Yes.

22 Q. And integrity of the soundness of the
23 research and that is when they turn to the
24 scientists?

25 A. Yes.

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1 Q. When they talk about whether they are in
2 compliance with the laws or whether they can do it
3 because of the legality or contracts that might be
4 binding Georgetown University, that's when they turn
5 to the lawyer?

6 A. Right.

7 Q. Okay. Are you familiar with something
8 called special accounts?

9 A. Special accounts? Not by that. Special
10 projects, yes. Special accounts, no.

11 Q. You say in the fourth paragraph on page

12 8: "A sponsor's motives in funding research are
13 irrelevant. So long as scientists are free to
14 publish their results and the data is not falsified,
15 it is immaterial who funds the research and for what
16 motives." Is that correct?
17 A. Uh-huh.
18 Q. Yes?
19 A. Yes.
20 Q. So, it is necessarily important as a
21 precondition that scientists be free to publish their
22 results and data?
23 A. Yes.
24 Q. So if, for example, CTR furnished a
25 particular scientific project, CTR motives are

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1 irrelevant to you based on this opinion; correct?
2 A. That's correct.
3 Q. So CTR freely allows its scientists to
4 publish their results and data?
5 A. Right.
6 Q. So the converse would also be if
7 scientists are not free to publish their results,
8 then the motives of the sponsors do become relevant?
9 MR. CASSETTA: I object to the form,
10 counsel. CTR had a number of programs. Please
11 specify.
12 MR. MIGLIORI: In the second question I
13 wasn't referring to CTR. I didn't use the words.
14 BY MR. MIGLIORI:

15 Q. If a scientist is not free to publish his
16 or her results and data the motives of the sponsor
17 then become relevant; is that correct?

18 A. In general I would say yes that would be
19 become important, sure.

20 Q. So a caveat or necessary condition to
21 your opinion here is the scientists' not only freedom
22 but right to publish their results and data?

23 A. Uh-huh.

24 Q. Yes?

25 A. Yes.

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1 Q. I am curious going through all this
2 information and material. Do you see yourself as a
3 libertarian of sorts?

4 A. Of sorts, yes.

5 Q. How do you define that?

6 A. I have self-described as a libertarian by
7 default in the sense, going back to our earlier
8 discussions about, in a society which has different
9 views of the good life, I think it is going to be
10 very limited as to what a government can enforce
11 without simply being the imposition of power.

12 Believe me, there are lots of things I
13 think are wrong with the world and lots of things I
14 think are inappropriate. In that sense, I am not a
15 libertarian because I think that freedom is good and
16 we ought to be committed to freedom, but it is more

17 that given the fragmented nature of moral knowledge,
18 the fragmented nature of moral life, I think that you
19 become a libertarian by default.

20 Q. And that goes back to your earlier
21 comment about the church's feeling that the ultimate
22 appeal is to the appeal of your conscience?

23 A. Right.

24 Q. And to that extent you are a libertarian?

25 A. Right. But I also think we are deeply

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1 conflicted as a society. I think we are truly at an
2 age of shifts and changes.

3 Q. I just have one last area of inquiry and
4 then we will be done?

5 A. Sure.

6 Q. You were asked in your deposition back in
7 March of 1997 about the tobacco industry's obligation
8 to tell the truth.

9 A. Uh-huh.

10 Q. And I will read to you from page 135 your
11 answer -- I will read you the question and the
12 answer.

13 A. Okay.

14 Q. Okay. It is on page 135 of the first day
15 of the testimony.

16 A. Okay.

17 Q. And the question posed by John McConnell
18 was, and this begins on line 30:

19 "Question: And the tobacco industry is

20 obligated to tell the truth about the health
21 consequences of their products."
22 "Answer: I think insofar as research
23 goes, and it is part of the public question about
24 what is owed, I think that is part of the ongoing
25 debate what we are having within the United States

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1 about what is owed to people vis-a-vis regulation and
2 legal policy."

3 Do you still hold that opinion?

4 A. Generally. This goes back, to use the
5 language we have crafted today about procedures. I
6 mean, I think one of the things that we continue to
7 struggle with in the United States is what are the
8 rules of the game? What are people owed? And, you
9 know, at one level obviously when there is
10 interchange between individuals or interchange
11 between groups, organizations, companies, whatever
12 people are owed truth.

13 But I think that is far too simplistic.
14 We have to get much clear and clearer about what that
15 impact means.

16 Q. Okay. And you go down that path with
17 Mr. McConnell?

18 A. Uh-huh.

19 Q. On page 136, line 4, this begins. He
20 asks further:

21 "Is the tobacco industry, the tobacco

22 companies, producers of cigarettes under an
23 obligation to tell the truth about the health
24 consequences of their products?"
25 And your answer beginning on line 8 is:

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1 "I think that how you would answer that
2 question in large part depends on the moral views and
3 assumptions that you bring to the question by which
4 you ask it."

5 Then you refer to Milton Friedman and
6 then attorney McConnell on line 16 focuses you and
7 says: "What does Dr. Wildes say?"

8 And your answer on line 17 on page 136:
9 "I think you are obligated insofar as there is
10 legitimate public discussion of an issue. I think
11 you are obligated to answer insofar as there are
12 legitimate requests, legitimate public requests for
13 information."

14 A. Uh-huh.

15 Q. Does that continue to your opinion?

16 A. Uh-huh.

17 Q. In fact, the sum and substance of your
18 opinion expressed in March of 1997 remains true
19 today?

20 A. Yes.

21 Q. What in your mind is a legitimate public
22 request for information?

23 A. Well, again, part of this is back to my
24 issues or my larger thing about procedural ethics,

25 and that is to say we need to craft and we have in

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1 large measure, but we need to keep I think refining
2 and redefining what this means, what he thinks people
3 are owed so that everybody has this common set of
4 expectations.

5 So if I ask somebody a legitimate
6 question about their product, that I have a good
7 expectation, we have common expectation about what in
8 fact I am owed or what the person needs to get back
9 to me. I think the key becomes for me at least
10 creating sort of common levels of expectations.

11 We know all too well and for the last
12 seven to eight months the difficulties of defining
13 what truth telling actually is. And I think in fact
14 part of, without going too far down one road, but
15 part of the current political crisis is that there
16 have been conflicting expectations about what
17 constitutes truth telling and what in fact people are
18 owed.

19 That is going to be the ongoing -- gosh,
20 there might be an article here come to think of it.
21 I think that's going to be, the procedural question
22 is going to be the ongoing question for the future.
23 What were people owed and to who was it?

24 And to go back to a very old example
25 about truth telling, and Saint Augustine who was

1 obsessed with telling the truth, even he raised the
2 question about, you know, you do owe the truth, you
3 always owe the truth but only if somebody has the
4 right to know the truth.

5 Q. That actually goes right to the
6 question. The right to know the truth would be
7 another way of saying, in your terms, legitimate
8 public request for information?

9 A. Yes, exactly.

10 Q. That's the right to know the truth.

11 A. Yes.

12 Q. Is public health a legitimate public
13 request for information, the good of public health?

14 A. I would argue that we are deeply
15 conflicted on this in large measure. Why do I say
16 that? Because if you look at the way we have pursued
17 health care broadly in the United States, it has not
18 been through a model of public health.

19 In fact, it has been through I would
20 argue, and I think it is a mistake actually, that the
21 model has been acute care medicine. That is the
22 model. Public health has always been sort of the
23 second stepchild, if you will, of health care in the
24 United States.

25 I think again part of what is going on

1 now is a real struggle as we are redefining health
2 care generally to maybe take a new look of public
3 health and what we mean by that.

4 But that will mean then the expansion of
5 more and more about how we understand what people are
6 owed vis-a-vis knowledge, you know, about impacts on
7 their health, and things like that.

8 Q. You read Dr. Richmond's testimony about
9 public health, correct?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes. I'm sorry.

13 Q. You agree generally with his testimony
14 regarding the goal of public health?

15 A. Yes.

16 Q. And you have testified already that
17 science benefits from robust debate about the public
18 health?

19 A. Yes.

20 Q. And you have also testified that candor
21 and discourse necessarily helps or facilitates the
22 benefit to science?

23 A. And society, yes.

24 Q. Okay. And so to that extent truthfulness
25 as it plays into the scientific debate is a necessary

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1 component in order for us to achieve the goals that
2 Dr. Richmond described for public health, correct?

3 A. Yes.

4 Q. So to the extent that there may be a
5 legitimate request for information regarding public
6 health issued by, for example, Dr. Richmond about
7 tobacco and health, that is something that the public
8 is owed?

9 MR. CASSETTA: Counsel, I object to the
10 form here. Are you talking about Dr. Richmond in his
11 capacity as surgeon general?

12 MR. MIGLIORI: Yes, with that
13 clarification.

14 BY MR. MIGLIORI:

15 Q. So if Dr. Richmond as surgeon general in
16 advancing the goals that he has testified to about
17 improving public health --

18 A. Right.

19 Q. -- if he were to make a request of the
20 tobacco industry regarding additives, for example,
21 that is a legitimate public request for information?

22 A. I would say yes but with a caveat in the
23 sense or in the sense that because of the nature of
24 the democratic structures of our society and
25 because -- let's stack two ambiguities on top of

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1 one -- ambiguous nature of health, it is an ever
2 expanding concept.

3 Recently the American College of
4 Physicians has decided that gun control is a health
5 issue, not just an issue.

6 Q. I am referring you specifically. I don't
7 mean to interrupt but I want to focus you. You have
8 read Dr. Richmond's testimony?

9 A. Yes.

10 Q. And you know what his concept of public
11 health is, correct?

12 A. Right.

13 Q. Do you agree with that concept?

14 A. In general, yes.

15 Q. So his request as surgeon general for
16 information would be a legitimate public request for
17 information in the robust debate and discourse?

18 MR. CASSETTA: Let me make an objection
19 here, Counsel. I object to the form. We are talking
20 in real generalities here of some request. I think
21 we need to have specifics before we can move on.

22 MR. MIGLIORI: I am giving him specifics
23 and I am in the process of giving him specifics.

24 BY MR. MIGLIORI:

25 Q. His request as surgeon general,

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1 Dr. Richmond's request as surgeon general for
2 information about tobacco and health from the tobacco
3 industry would be a legitimate public request for
4 information as you have described it in your March
5 1997 testimony?

6 A. Yes, but I think -- and again this goes
7 back to the nature of our society -- the surgeon

8 general is not the czar of health care. So we have
9 other structures that are part of this.

10 There is a process I think, and it is
11 cumbersome and not easily -- it's not a neat process
12 by which we decide whether or not something is a
13 legitimate request.

14 Obviously, it can be initiated from the
15 administrative side, the surgeon general. This is
16 also an important place where the court and others
17 play roles in determining if he went and asked X
18 industry and they thought it was not a legitimate
19 request, they would have recourse to courts or
20 whatever along the way.

21 With that in mind, yes, because I think
22 part of what goes on is the process and the structure
23 by which we define what is legitimate or not
24 legitimate along the way.

25 Q. Sure. And that's why I do this in a

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1 specific context of the surgeon general. I assume by
2 your testimony you are not saying that Dr. Richmond
3 fashioned himself as a czar?

4 A. No.

5 Q. You have read his idea of the goal of
6 public health, correct?

7 A. Yes.

8 Q. And that is something again that you
9 agree with?

10 A. I don't know that we as nation agree with

11 it, but that's a larger question along the way, only
12 because I don't think we thought a lot about public
13 health.

14 Q. Okay. And that's actually part of
15 Dr. Richmond's testimony that in his role as surgeon
16 general one of the things that he was bringing to it
17 was a greater concern for the general concept of
18 public health?

19 A. Right.

20 Q. And in fact he today is a professor of
21 public health at Harvard?

22 A. Yes.

23 Q. And so specific to Dr. Richmond and what
24 you know of his concerns for public health, how he
25 defines public health, what thought he has put into

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1 public health in his role as surgeon general from
2 1977 to 1981, his questions about information or
3 about or his request for information from the tobacco
4 industry about tobacco and health would be or were
5 legitimate public requests for information?

6 MR. CASSETTA: I am going to object to
7 you, Counsel. It is a compound question and again I
8 object to the form. It is very vague and general
9 what specific request you are talking about.

10 MR. MIGLIORI: I am going to object again
11 and I am going to keep asking the question until it
12 is answered. We can continue with this process.

13 But I have laid down a foundation with
14 several assumptions that you have asked me to
15 clarify, and I am now specifically referring to
16 years. I am referring to Dr. Richmond's concept of
17 public health. I am referring to Dr. Richmond's
18 concern for public health and his request for
19 information from the industry regarding tobacco and
20 health.

21 BY MR. MIGLIORI:

22 Q. With those assumptions, would you,
23 Dr. Wildes, consider that to be his request for
24 information from the tobacco industry "a legitimate
25 public request for information" as you have described

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1 it in your March 1997 deposition testimony?

2 MR. CASSETTA: Counsel, I have to restate
3 my question. Excuse me. I have to restate my
4 objection. My objections are the same.

5 MR. MIGLIORI: Okay.

6 BY MR. MIGLIORI:

7 Q. Can you answer the question?

8 A. Yes. Especially if you put it somewhat
9 broader, not only can he make the request, but the
10 tobacco or any company has recourse to other public
11 structures, you know, if they feel the request is
12 illegitimate.

13 All I am trying to say, and I don't mean
14 to be obscuring anything, is that the process of
15 legitimation is a process. It is not just simply

16 vested with one person or a set of persons.
17 Q. And it necessarily requires, as you said,
18 discourse?
19 A. Uh-huh.
20 Q. Yes?
21 A. Yes.
22 Q. Candor?
23 A. Yes.
24 Q. Truthfulness?
25 A. (No verbal response.)

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1 Q. Essentially exchange of information?
2 A. Yes.
3 Q. Okay. So to that extent, then, that duty
4 is owed provided -- the duty of all those things is
5 owed provided that it is legitimate public request
6 for information?
7 A. Yes.
8 MR. CASSETTA: I object again --
9 MR. MIGLIORI: That's all I have.
10 MR. CASSETTA: -- To the form of that
11 last question.
12 MR. MIGLIORI: Okay.
13 Thank you very, very much for your time.
14 THE WITNESS: Thank you.
15 VIDEOGRAPHER: We are off the record at
16 11:33.
17 (Whereupon, at 11:33 a.m., the deposition

18 was concluded.)

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1 I HEREBY CERTIFY that I have read this
2 transcript of my deposition and that this transcript
3 accurately states the testimony given by me, with the
4 changes or corrections, if any, as noted.

5

6

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X

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11 Subscribed and sworn to before me this day of
12 , 19 .

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X

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Notary Public

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19 My commission expires: .

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1 C O N T E N T S

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3 WITNESS EXAMINATION

4 Kevin William Wildes

5 by Mr. Migliori 5

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11 E X H I B I T S

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13 DEPOSITION NUMBER IDENTIFIED

14 Plaintiff's Exhibits 1 and 2 6

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